

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JEFFERSON-PILOT INSURANCE
COMPANY,

Plaintiff,

vs.

No. C-1-02-479

CHRISTOPHER L. KEARNEY,

Defendant.

VIDEOTAPED DEPOSITION OF WILLIAM
DEMPSEY, a Witness, taken on behalf of the
Defendant before Mary Lynn Cushing, CSR, CCR No.
1077, pursuant to Notice on the 13th day of
June, 2007, at the Law Offices of Stinson,
Morrison, Hecker, LLP, 1201 Walnut Street, Suite
2900, Kansas City, Missouri, 64106.

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APPEARANCES

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2
3 Appearing for Jefferson-Pilot
4 Insurance Company and Disability Management
5 Services was Mr. John E. Meagher of Shutts &
6 Bowen, LLP., 1500 Miami Center, 201 South
7 Biscayne Boulevard, Miami, Florida, 33131
8 Appearing telephonically for
9 Jefferson-Pilot Insurance Company was Ms.
10 Stephanie T. Farabow, 826 North Elm Street,
11 Greensboro, North Carolina, 27401.
12 Appearing telephonically for
13 Disability Management Services was Mr. Adam
14 Formus, Legal Counsel, of Disability Management
15 Services, 1391 Main Street, Suite 1600,
16 Springfield, Massachusetts, 01103.
17 Appearing for William Dempsey was Mr.
18 Bruce E. Baty of Stinson, Morrison, Hecker, LLP,
19 1201 Walnut Street, Suite 2900, Kansas City,
20 Missouri.
21 Appearing for Christopher Kearney was
22 Mr. Michael A. Roberts of Graydon, Head &
23 Ritchey, LLP, 1900 Fifth Third Center, 511
24 Walnut Street, Cincinnati, Ohio, 45202.
25

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1 INDEX CONTINUED: MARKED: IDENTIFIED:
2 Dempsey Exhibit 16 61 97
3 Dempsey Exhibit 17 61 99
4 Dempsey Exhibit 18 61 99
5 Dempsey Exhibit 19 61 100
6 Dempsey Exhibit 20 61 100
7 Dempsey Exhibit 22 61 101
8 Dempsey Exhibit 23 61
9 Dempsey Exhibit 24 61 105

10
11 (Exhibits filed with the Original.)
12
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1 Also present was Jeremy Martin,
2 Videographer of Metropolitan Court Reporters,
3 Inc., 9200 Indian Creek Parkway, Suite 205,
4 Overland Park, Kansas, 66210.
5 INDEX CONTINUED:
6 WITNESS: PAGE:
7 WILLIAM DEMPSEY
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22 Dempsey Exhibit 12 61 96
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1 (Deposition commenced at 12:00 PM.)
2 MR. MARTIN: This is the
3 videotaped deposition of William Dempsey, Case
4 No. C-1-02-479. Today's date is June 13th of
5 2007. The time is now 12:11 a.m. Central
6 Standard Time. We are going on the record.
7 Counsel, would you please state your
8 appearances.
9 MR. MEAGHER: John Meagher
10 representing Jefferson-Pilot and Disability
11 Management Services.
12 MR. BATY: Bruce Baty
13 representing the witness, Mr. Dempsey.
14 MR. ROBERTS: For the defendant
15 Chris Kearney is Mike Roberts.
16 MR. MARTIN: Do you want the
17 appearing by phone to announce?
18 MR. MEAGHER: Also appearing are
19 Adam Formus of Disability Management Services
20 and Stephanie Farabow of Jefferson-Pilot.
21 MR. MARTIN: Thank you. Would
22 you please swear in the witness.
23 WILLIAM DEMPSEY,
24 being first duly sworn, testified under oath as
25 follows:

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1 EXAMINATION
 2 BY MR. ROBERTS:
 3 Q. Good afternoon, sir, my name is Mike
 4 Roberts. I'm a lawyer and I represent Chris
 5 Kearney in a lawsuit pending in the State of
 6 Ohio Federal Court there.
 7 Could you please state your name and
 8 address for the record, please?
 9 A. **William Edward Dempsey, D-E-M-P-S-E-Y.**
 10 Q. Mr. Dempsey, I understand that you have
 11 a law degree?
 12 A. **Yes.**
 13 Q. Where did you go to law school?
 14 A. **Washburn Law school in Topeka, Kansas.**
 15 Q. What year did you graduate?
 16 A. **1990.**
 17 Q. As did I. Tell me your employment
 18 history since 1990?
 19 A. **I worked for the Kansas Insurance**
 20 **Department from 19 -- well, until 1993, until**
 21 **September of 1993. And I went to work for a**
 22 **company called US Physicians Mutual Risk**
 23 **Retention Group in Kansas City in September of**
 24 **1993 and was employed there until May of 1996.**
 25 **In May of 1996 I accepted a position with Smith**

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1 **Staffing Services in Wichita, Kansas, and I**
 2 **worked there until October of 2006, at which**
 3 **time I accepted a position with Employers**
 4 **Reinsurance Corporation in Overland Park,**
 5 **Kansas, and I've been employed there since.**
 6 Q. Did you say Employers Reinsurance or
 7 Employees Reassurance?
 8 A. **Employees Reinsurance.**
 9 Q. R-E-I.
 10 A. **R-e-i-n-s-u-r-a-n-c-e.** The corporation
 11 was purchased by Swiss Re, a good portion of the
 12 corporation was purchased by Swiss Re. The sale
 13 closed in late June of 2006 and the life and
 14 health portion of the business became Employers
 15 Reassurance Corporation.
 16 Q. You're getting ahead of me a little
 17 bit?
 18 A. **I apologize.**
 19 Q. I may have written this down
 20 incorrectly. Did you say you were at Smith
 21 Staffing from May of '96 to October of '96?
 22 A. **Correct.**
 23 Q. And then from October of '96 through
 24 the present it's been Employers Reinsurance?
 25 A. **It was Reinsurance until the sale of**

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1 **the company. And then it become ERAC, Employers**
 2 **Reassurance Corporation.**
 3 Q. Change one vowel?
 4 A. **Add one, yes. Instead of ERC it's**
 5 **ERAC.**
 6 Q. Who did you report to when you started
 7 at ERC?
 8 A. **Robert Lainer.**
 9 Q. Is Mr. Lainer a lawyer?
 10 A. **No.**
 11 Q. What was his position then?
 12 A. **Assistant Vice-President.**
 13 Q. Lainer is L-a-i-n-e-r?
 14 A. **Correct.**
 15 Q. And he was Assistant Vice-President at
 16 ERC?
 17 A. **Correct.**
 18 Q. And did he remain your superior until
 19 the transaction you described earlier with Swiss
 20 Re?
 21 A. **He was my supervisor until**
 22 **approximately two years ago and they had a**
 23 **company reorganization. And so both Bob Lainer**
 24 **and myself report to another person now. We're**
 25 **on the same level. They flattened the**

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1 **organization so to speak. So instead of having**
 2 **myself and several people report to Bob, we just**
 3 **now report to a different individual.**
 4 Q. In the last two years who is it you
 5 have been reporting to?
 6 A. **Tom Felgate.**
 7 Q. Can you spell that last name, please?
 8 A. **F-e-l-g-a-t-e.**
 9 Q. What is Mr. Felgate's position?
 10 A. **He is the head of the life and health**
 11 **claims area for Employers Reassurance**
 12 **Corporation.**
 13 Q. Is he also a Vice-President?
 14 A. **I don't know if he has that title.**
 15 Q. What is your title presently?
 16 A. **Claims counsel.**
 17 Q. What has your title been along the
 18 progression from October of '96 through today?
 19 A. **The same.**
 20 Q. Did the company have a general counsel,
 21 someone filling that title?
 22 A. **Yes.**
 23 Q. Who was that?
 24 A. **I can't remember the individual's name**
 25 **when I first started there. And it's been**

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1 bracketed Dennison & Woods General Electric of
2 recent years. I take it back, John Conley was
3 general counsel with ERC when I began there. He
4 retired after I was there for five or six years
5 and I can't recall the name of the gentleman
6 that took -- I take it back again. Nick Spaeth,
7 S-p-a-e-t-h. And I'm not sure who succeeded
8 Mr. Spaeth in that position since then.

9 Q. And then the next time your employer
10 had a general counsel would be with GE in the
11 past two years?

12 A. Right. They recently retained an
13 individual by the name of Katherine Russell out
14 of our Indianapolis office to fill that position
15 for our new entity. We've not had a person in
16 that position since we've been ERAC, so they
17 just recently put that person in that position.

18 Q. Let's go back to '96 to the timeframe
19 prior to the transaction between Swiss Re and
20 whoever else. Were you in the General Counsel
21 Office during that period or were you outside
22 that office?

23 A. I was outside that office.

24 Q. How many lawyers were in that office?

25 A. I don't know.

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1 Q. Why were you not in the General Counsel
2 Office during that '96 through 2004 period?

3 A. I don't know.

4 Q. Were there other lawyers like you who
5 were not inside the General Counsel Office at
6 ERC?

7 A. Yes.

8 Q. Was Mr. Newkirk a lawyer like you
9 outside the General Counsel Office?

10 A. Yes.

11 Q. Was he also a claims counsel?

12 A. I believe David's title was Assistant
13 Vice-President at that time I came into the
14 organization.

15 Q. But you didn't report to him?

16 A. No.

17 Q. Did you ever report to him?

18 A. No.

19 Q. Was there ever an occasion where he
20 reported to you?

21 A. No.

22 Q. Did you work on files with Mr. Newkirk?

23 A. My job duties were similar to
24 Mr. Newkirk's. However, I guess I'm not certain
25 what you mean by work on files.

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1 Q. You're mindful that this particular
2 litigation concerns a long term disability or
3 residual disability insurance policy?

4 MR. MEAGHER: Objection to form.

5 A. Yes.

6 Q. (By Mr. Roberts) Are those types of
7 policies the only types of insurance policies
8 that you have had responsibility for since '96?

9 A. No.

10 Q. What kind of insurance policies have
11 you had responsibility for since '96?

12 A. Life insurance, critical illness, long
13 term care, group -- excuse me, group disability
14 and individual disability and occasionally some
15 medical claims.

16 Q. So this fits within the individual
17 disability arena?

18 A. Yes.

19 Q. Were there other lawyers at ERC from
20 '96 to 2004 that also had responsibilities for
21 individual disability claims?

22 A. Yes.

23 Q. Who were they?

24 A. David Newkirk.

25 Q. Anyone else?

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1 A. Not that I recall. Can I correct that?

2 Q. Absolutely.

3 A. I do recall one individual who had some
4 involvement with individual, but was primarily
5 focused on the group disability claims, a person
6 by the name of Dan Schlep, S-c-h-l-e-p. Also
7 had a limited amount of involvement with
8 individual disability.

9 Q. Thank you. Have you ever given a
10 deposition before?

11 A. Yes.

12 Q. How many occasions?

13 A. One.

14 Q. Have you ever testified at a trial?

15 A. Yes.

16 Q. Was the deposition in an individual
17 disability case?

18 A. It related to individual disability
19 cases, but it did not concern one specific
20 disability case.

21 Q. What type of proceeding or action was
22 it?

23 A. It was a contract action between
24 Employers Reassurance Corporation and one of the
25 companies that we do business with.

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1 Q. Jefferson-Pilot?
 2 A. No.
 3 Q. What was the other company?
 4 A. Mass Mutual.
 5 Q. Was that proceeding here in Kansas?
 6 A. No.
 7 Q. Where was it?
 8 A. Western District of Missouri.
 9 Q. What year?
 10 A. Filed in 2006, February of 2006 I
 11 believe.
 12 Q. It's gone to trial already?
 13 A. No, it's in discovery.
 14 Q. That's the case you gave your
 15 deposition in?
 16 A. Yes.
 17 Q. What type of proceeding did you testify
 18 at trial?
 19 A. A matter involving an insurance
 20 receivership.
 21 Q. Is Employers Reinsurance Corporation a
 22 plaintiff in the Western District of Missouri
 23 case?
 24 A. Yes. It -- actually, I take that back.
 25 It may be Employers Reassurance Corporation,

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1 ERAC. I'm getting confused by my own acronyms
 2 here. It's Employers Reassurance Corporation.
 3 Q. Does the action concern rights and
 4 responsibilities between the insurer Mass Mutual
 5 and the reinsurer ERC or ERAC?
 6 A. Yes. It is a contract action.
 7 Q. Is General Electric the owner or is
 8 ERAC a subsidiary of General Electric?
 9 A. Yes, ultimately.
 10 Q. How long has that been the case?
 11 A. I believe General Electric purchased
 12 Employers Reinsurance Corporation in 1984 or
 13 '85. I don't know the exact date, but that's a
 14 ballpark figure.
 15 Q. So throughout your tenure with ERC or
 16 ERAC, it's been a subsidiary of GE?
 17 A. Correct.
 18 Q. And in 2004 a company affiliated with
 19 Swiss Re purchased some of the business that had
 20 been traditionally within ERC?
 21 A. Actually, I believe it is Swiss Re
 22 themselves that made the purchase.
 23 Q. But that purchase did not concern
 24 individual disability reinsurance?
 25 A. No, it did not.

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1 Q. I asked you a negative question. Do
 2 you know what the reason for that was?
 3 A. The reason for what?
 4 Q. Why that was not part of the
 5 transaction that particular block of business?
 6 A. I heard some reasons, but I don't know
 7 that they are -- I wasn't involved in the
 8 negotiations, so I can't tell you other than
 9 hearsay.
 10 Q. You're mindful that Mr. Kearney's
 11 insurer is Jefferson-Pilot, right?
 12 A. I'm aware that Mr. Kearney has a policy
 13 issued by Jefferson-Pilot.
 14 Q. Can you describe for the jury what
 15 ERC's now ERAC's relationship is with
 16 Jefferson-Pilot as it would concern Mr. Kearney?
 17 A. There's a reinsurance agreement between
 18 Jefferson-Pilot and ERC that provides that ERC
 19 reimburses a percentage of loss on claims.
 20 Q. Across an entire spectrum of policies
 21 that have been sold by Jefferson-Pilot?
 22 A. Within a timeframe. I don't recall the
 23 exact period that it was involved, but ERC has
 24 reinsured the Jefferson-Pilot block since
 25 sometime in the 1960's I believe.

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1 Q. And I presume that in the 60's there
 2 was some large agreement that lawyers helped
 3 create and probably been modified or amended
 4 coming forward to 2007?
 5 A. There's a reinsurance agreement between
 6 the parties, yes.
 7 Q. The parties being ERC and
 8 Jefferson-Pilot?
 9 A. Correct.
 10 Q. And under that agreement, does ERC,
 11 subsidiary of General Electric, have 80 percent
 12 of the obligation on claims like Mr. Kearney's
 13 that have been made under the insurance policy?
 14 A. The reimbursement under the reinsurance
 15 agreement varies according to the date of loss.
 16 Q. I saw some references in the documents
 17 produced to me a week ago that it's 80 percent
 18 or so in Mr. Kearney's case. Is that correct as
 19 far as you know?
 20 A. I don't know.
 21 Q. So depending on when Mr. Kearney
 22 purchased his policy would direct how much, what
 23 percentage of the obligation ERC would have
 24 versus Jefferson-Pilot should he ever file a
 25 claim, is that accurate?

Page 18

1 A. No.

2 Q. Can you tell the Court or the jury how
3 this reinsurance agreement works when someone
4 like Mr. Kearney files a claim?

5 A. It would be triggered by the date of
6 loss and the amount of the retention that
7 Jefferson-Pilot had on the claim at that point
8 in time.

9 Q. Can you tell the jury what retention
10 means?

11 A. Retention is the amount of the overall
12 risk that is kept by Jefferson-Pilot and the
13 balance is paid by Employers Reinsurance
14 Corporation.

15 Q. Do you know what the retention was on
16 Mr. Kearney's claim?

17 A. No, I don't.

18 Q. Is that something that is dictated by
19 the reinsurance agreement based on his date of
20 loss?

21 A. Correct.

22 Q. Are you mindful Mr. Kearney is getting
23 paid benefits today and has been receiving
24 benefits for 14 years?

25 A. I'm aware that Mr. Kearney is receiving

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1 benefits and has been receiving them since
2 sometime in the 1990's. I'm not sure of the
3 exact date of loss.

4 Q. Can you tell the jury what percentage
5 of those benefit payments are the responsibility
6 of ERAC today versus Jefferson-Pilot?

7 A. No.

8 Q. Why not?

9 A. I don't know what the retention is on
10 his particular claim.

11 Q. Sir, every month for several years
12 you've been involved in correspondence and
13 e-mails regarding Mr. Kearney's claim in this
14 litigation, correct?

15 A. I've been involved in numerous e-mails
16 and correspondences over the course of time,
17 yes.

18 Q. We can go through the privilege log.
19 You've been involved every month for years in
20 this claim, right?

21 MR. MEAGHER: Objection, asked
22 and answered.

23 Q. Correct?

24 A. Yes.

25 Q. (By Mr. Roberts) And your testimony in

Page 20

1 front of the jury is that you don't know what
2 percentage of Mr. Kearney's claim is on your
3 company's nickel versus Jefferson-Pilot's
4 nickel?

5 MR. MEAGHER: Objection, asked
6 and answered.

7 A. That is correct.

8 Q. (By Mr. Roberts) Is your company's
9 responsibility more or less than 50 percent?

10 A. I believe it's more than that, more
11 than 50 percent?

12 Q. Is it more or less than 75?

13 A. I don't know.

14 Q. Can you tell the jury what the word
15 ceded means?

16 A. Ceded in the reinsurance context means
17 the amount of a given loss that an insurer, such
18 as Jefferson-Pilot, would cede to a reinsurer,
19 such as Employers Reinsurance Corporation,
20 meaning that a percentage of the loss is in
21 exchange for a percentage of the premium is paid
22 by the reinsurer.

23 Q. So let's try to say that in a way that
24 I can understand. Are you saying that insurance
25 companies sell policies to Joe Smith. And in

Page 21

1 that policy the insured, the individual says
2 "I'll pay you so much premium if you promise to
3 pay me so much of a benefit if I ever have a
4 claim."

5 And then what the insurance company
6 does is goes to a reinsurer like ERAC and says
7 "Hey, we have this block of policies that we
8 intend to sell or we have sold. It's going to
9 bring us X amount premium dollars a year. We
10 will give you so much percentage of that if you
11 agree to accept the risk when people file claims
12 under this block." Is that kind of an accurate
13 description of what's going on?

14 A. In essence the reinsurer accepts part
15 of the risk in return for part of the premium.

16 Q. So on this particular type of policy
17 that Mr. Kearney purchased from Jefferson-Pilot,
18 because of the type of policy it is during the
19 time period he purchased it, and the period he
20 filed a claim, ERC and now ERAC has had a
21 greater than 50 percent stake in the payment of
22 benefits to Mr. Kearney, is that correct?

23 A. Can you restate that, please? I want
24 to make sure I understand exactly what you're
25 saying.

Page 22

1 Q. Given the facts before us, the type of
2 policy Mr. Kearney purchased, the date he
3 purchased it, the particular riders he
4 purchased, the amounts of the claim, the date he
5 filed the loss, given all those things, because
6 of this agreement between this General Electric
7 subsidiary and Jefferson-Pilot, your company,
8 the General Electric subsidiary, has greater
9 than 50 percent of the responsibility to pay the
10 claim monetarily ultimately?

11 **A. Pursuant to the terms of the**
12 **reinsurance agreement, ERC has a percentage of**
13 **the loss, which to my recollection is greater**
14 **than 50 percent.**

15 Q. And since the time that Mr. Kearney
16 purchased his claim, your company, the General
17 Electric subsidiary, has been receiving a
18 percentage of the premium dollars that he's
19 paid, true? Is that correct?

20 **A. I can only assume so. I don't know**
21 **that for a fact.**

22 Q. So tell the jury what you do as claims
23 counsel for ERC?

24 **A. I work with the companies that we**
25 **reinsure. I go out and look at the claims that**

Page 23

1 **are incurred on occasions. Sometimes they are**
2 **sent to my office. Just depends on the nature**
3 **of the reinsurance agreement.**

4 Q. I'm not sure I fully understood you.
5 Your responsibilities go beyond just the
6 individual disability insurance policies that
7 Jefferson-Pilot sold, correct?

8 **A. Correct.**

9 Q. Although that is within your
10 responsibility, you also cover these other types
11 of insurance, life, long term care, the others
12 you described to me?

13 **A. Correct.**

14 Q. But when a policyholder of a
15 Jefferson-Pilot policy files a claim, that would
16 come within your area of responsibility as the
17 reinsurer, is that right?

18 **A. No.**

19 Q. What about that question was not
20 correct?

21 **A. I don't have direct involvement with**
22 **the claim per se. The claim was sent initially**
23 **to Jefferson-Pilot. Subsequent to January of**
24 **2000, I believe the claims were sent to**
25 **Disability Management Services.**

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1 Q. I'm speaking generally. I'm not
2 speaking about Mr. Kearney's policy
3 specifically. I'm sorry if I confused you.

4 If John Doe, Jefferson-Pilot
5 policyholder, were to file a claim or had a
6 claim pending since '96, would that claim
7 necessarily be something that you would have
8 responsibility for here as the reinsurer?

9 **A. No.**

10 Q. Why not?

11 **A. It's not my job to adjudicate the**
12 **claims.**

13 Q. I didn't say adjudicate. When would
14 you have any involvement in John Doe's
15 Jefferson-Pilot claim?

16 **A. In which context, with Jefferson-Pilot**
17 **or DMS?**

18 Q. Let's talk about the period prior to
19 2000.

20 **A. I would look at claims sometimes at the**
21 **request of Jefferson-Pilot. Sometimes I would**
22 **visit Greensboro and we would look at a list of**
23 **claims. We would pick out a random list of**
24 **claims to examine and that was the extent of my**
25 **involvement. It would just be to review the**

Page 25

1 **contents of the claim file.**

2 Q. Your testimony to the jury is you would
3 from time to time go and perform somewhat of an
4 audit function in Greensboro of the
5 Jefferson-Pilot claims?

6 **A. A review would probably be a more apt**
7 **description of what we did. We would review the**
8 **contents of the claim file.**

9 Q. Is your testimony that this review
10 would be entirely random, or would you go to
11 North Carolina from Kansas with the intention of
12 looking at specific claims that you would
13 identify?

14 **A. We would have identified claims ahead**
15 **of time for Jefferson-Pilot to have ready, to**
16 **have them pulled so that we wouldn't have to do**
17 **it when we got there. So we would identify a**
18 **list of claims for them.**

19 Q. Did you randomly identify the claims or
20 were they claims that you specifically
21 identified for reasons?

22 **A. A combination.**

23 Q. Did you ever do that with regard to
24 Mr. Kearney's claim as far as you know?

25 **A. I don't recall if I ever examined**

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1 **Mr. Kearney's claim in it's entirety. I can't**
 2 **tell you that I did or did not. I honestly**
 3 **don't recall.**

4 Q. So your involvement in the
 5 Jefferson-Pilot insured claims would be either
 6 at Jefferson-Pilot's invitation, or you might
 7 identify a claim that's been pending that you
 8 want to take a look at, or you could randomly
 9 just go to Greensboro and do an audit of a
 10 claim?

11 **A. I could randomly identify certain**
 12 **claims and examine them when I got there, yes.**

13 Q. Did the situation ever exist where --
 14 did Jefferson-Pilot have a duty to report to the
 15 reinsurer new claims that were filed, amounts of
 16 indemnity, what percentage ERC had to pay versus
 17 what percentage JP had to pay?

18 **A. Jefferson-Pilot has an obligation under**
 19 **the reinsurance agreement to place ERC on notice**
 20 **of events likely to lead to liability. So you**
 21 **can, I guess, interpret that to mean a lot of**
 22 **different things. But that's essentially the**
 23 **wording of the reinsurance agreement.**

24 Q. Do you understand that agreement then
 25 to require JP to notify you when a claim is

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1 **records, but I'm not a pricing or reserving**
 2 **actuary, so I can't really address that.**

3 Q. I'm not asking you to opine for me.
 4 Just based on your knowledge, did ERC maintain a
 5 reserve for its portion of the liability on a
 6 claim and Jefferson-Pilot maintain its own
 7 reserve for its portion of the liability on a
 8 claim?

9 **A. I believe Jefferson-Pilot maintains a**
 10 **reserve and then takes a credit on their annual**
 11 **statement for reinsurance agreements. ERC also**
 12 **-- or ERC carries a reserve commensurate with**
 13 **their liability on a block of business.**

14 Q. So once a claim is made, ERC, someone
 15 outside of your department, presumably somebody
 16 in the actuary department, makes some assessment
 17 of what the reserve is that should be carried by
 18 ERC, at least prior to 2000?

19 **A. That would be my understanding.**

20 Q. And then that person, John Doe's claim,
 21 would be in some directory or log of the pending
 22 claims on which reserves need to be maintained?

23 **A. I believe so.**

24 Q. In your capacity as claims counsel,
 25 would you then use that information you had

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1 filed by an insured under an individual
 2 disability policy?

3 **A. I believe so.**

4 Q. And then is there some tracking system
 5 at ERC to follow how that claim develops and how
 6 it's adjudicated by Jefferson-Pilot at least
 7 prior to 2000?

8 **A. No.**

9 Q. What do you do with that information
 10 when you get the notice from Jefferson-Pilot?

11 **A. Those were primarily used for billing**
 12 **purposes and to establish the appropriate**
 13 **reserves.**

14 Q. Did ERC establish its own reserves
 15 regardless of what Jefferson-Pilot may have
 16 reserved?

17 **A. I believe we use the information from**
 18 **the insurer to establish the reserve. And I**
 19 **think we may have also had formulas based on**
 20 **experience that we applied in addition to**
 21 **strengthen reserves.**

22 Q. So did -- the situation where ERC
 23 maintained its own reserve on a claim and
 24 Jefferson-Pilot maintained its own reserve?

25 **A. Both companies maintain their own**

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1 internally at ERC to identify claims on which
 2 you desired greater information from
 3 Jefferson-Pilot?

4 **A. That -- a reserve is a factor we would**
 5 **consider among other factors, but it was not a**
 6 **determinant in and of itself.**

7 Q. Thank you for your answer. Actually
 8 that wasn't my question. But once a claim is
 9 reported to ERC, there is some monitoring of
 10 that or reflection of that in ERC's own business
 11 records, right?

12 MR. MEAGHER: Objection to form.

13 **A. I'm not sure what you mean by**
 14 **monitoring. I mean the numbers are what they**
 15 **are. They're formulated. They are derived from**
 16 **the Commissioners of Insurance Disability**
 17 **Tables, and so they are what they are. They are**
 18 **not something that are subject to change by an**
 19 **individual on any basis. You just plug the data**
 20 **in and the reserve is what it is.**

21 Q. (By Mr. Roberts) That wasn't my
 22 question. My question was if, say, in '96 there
 23 were 273 claims pending at Jefferson-Pilot on
 24 which the subsidiary of General Electric had
 25 reinsurance obligations, would all 273 of those

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1 names appear in some business record of ERC?
 2 MR. MEAGHER: Objection to form.
 3 A. Yes.
 4 Q. (By Mr. Roberts) Would all of the
 5 claim files associated with those hypothetical
 6 273 claimants been housed at ERC?
 7 A. **We don't typically have claim files on**
 8 **individual claims at ERC.**
 9 Q. Well, in this lawsuit I served a
 10 subpoena and last week there was over, I think
 11 3600 pages of information produced by your
 12 company regarding Mr. Kearney. Do you have that
 13 volume of information regarding claimants on
 14 which you reinsure?
 15 MR. MEAGHER: Objection to the
 16 form. You may answer.
 17 A. **It would probably depend on the claim.**
 18 **I suspect the reason there were 3600 pages as**
 19 **you state with respect to this claim is because**
 20 **it's in litigation.**
 21 Q. (By Mr. Roberts) You said that you
 22 might go out and look at a claim. And under
 23 some agreement with your company's clients, you
 24 send -- this is sent to the office depending on
 25 reinsurance agreements. What did you mean by

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1 that?
 2 A. **On some reinsurance agreements**
 3 **particularly where a company is engaging in a**
 4 **line of business that they are not perhaps**
 5 **accustom to marketing such as critical illness,**
 6 **ERC would have the right to review the claim**
 7 **before a decision is made in that matter.**
 8 Q. What did you mean by it's sent to this
 9 office depending on the reinsurance agreement.
 10 The entire claim file gets sent to ERC or ERAC?
 11 A. **The information that the insurer has**
 12 **gathered with respect to the claim would be**
 13 **forwarded to our offices for review.**
 14 Q. Did that happen in Mr. Kearney's case?
 15 A. No.
 16 Q. Where did you go to college, sir?
 17 A. **I graduated from Fort Hays State**
 18 **University.**
 19 Q. In addition to having this business
 20 relationship with Jefferson-Pilot in 1996 or
 21 1997, did your company have a business
 22 relationship with Disability Management
 23 Services?
 24 A. **I believe so.**
 25 Q. What do you understand that the nature

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1 of that relationship to be?
 2 A. **I, as I understand it, they had a**
 3 **consulting agreement with Disability Management**
 4 **Services.**
 5 Q. "They" meaning --
 6 A. **ERC.**
 7 Q. -- ERC. Is ERC and ERAC different
 8 companies or just a name change?
 9 A. **ERAC was a wholly-owned subsidiary of**
 10 **ERC at one point in time for business reasons**
 11 **and the way they compartmentalized the various**
 12 **lines of business that they engaged in.**
 13 Q. Okay. So ERC entered some kind of
 14 consulting agreement with Disability Management
 15 Services in about '96 or '97, is that right?
 16 A. **I don't know when the agreement was**
 17 **entered into, but it existed at the time I began**
 18 **my employment.**
 19 Q. And can you tell the jury what you
 20 understand to be the main points of that
 21 agreement?
 22 A. **I only know that ERC had that**
 23 **agreement. I really -- I don't -- I never**
 24 **reviewed the document. I don't know anything**
 25 **about it.**

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1 Q. As you understand the agreement just
 2 the way it works without reading it, was it a
 3 situation where ERC would select certain claims
 4 for review by DMS whether they be
 5 Jefferson-Pilot insureds or Mass Mutual insureds
 6 or other clients of ERC?
 7 A. **I don't know what the process was.**
 8 Q. You do know that Mr. Kearney's claim
 9 was selected for review by DMS pursuant to the
 10 ERC consulting agreement entered about 1997,
 11 right?
 12 MR. MEAGHER: Objection to form.
 13 A. **I know that DMS was involved. I don't**
 14 **know how it -- Mr. Kearney's claim became**
 15 **involved, or how DMS became involved with**
 16 **Mr. Kearney's claim.**
 17 Q. (By Mr. Roberts) Were you the point
 18 person for JP with regard to Mr. Kearney's claim
 19 in 1997 or was that Mr. Newkirk?
 20 A. **I believe that was Mr. Newkirk.**
 21 Q. Did there come a point where
 22 Mr. Newkirk relinquished that responsibility to
 23 you?
 24 A. Yes.
 25 Q. When was that?

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1 A. I believe it was in 1998.
 2 Q. What precipitated that?
 3 A. I really don't know.
 4 Q. He just came into your office one day
 5 and said "Here, I want you to have that client.
 6 I don't want to deal with it anymore?"
 7 A. No.
 8 Q. Do you recall how it happened?
 9 A. I recall having the responsibility for
 10 the Jefferson-Pilot account given to me sometime
 11 in 1998.
 12 Q. What did you do in preparation for
 13 today's deposition, sir?
 14 A. I spoke with counsel yesterday. That's
 15 essentially it.
 16 Q. You're referring to?
 17 A. I'm referring to Mr. Baty and Mr.
 18 Meagher.
 19 Q. You met with the two of them yesterday?
 20 A. That is correct.
 21 Q. For how long?
 22 A. Probably five hours including lunch.
 23 Q. Did anyone else participate during the
 24 course of that five-hour meeting with two
 25 lawyers?

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1 A. Yes.
 2 Q. Who else?
 3 A. Mr. Formus and Ms. Farabow and
 4 Mr. Ellis for a very brief period of time, and
 5 Mr. Cohen for a brief period of time.
 6 Q. So you're a lawyer and yesterday you
 7 met with those six lawyers?
 8 A. That's correct.
 9 Q. Preparing for today's depo?
 10 A. That is correct.
 11 Q. And did you meet today with your
 12 counsel in preparation for the deposition?
 13 A. I spoke with him briefly before we came
 14 to this floor for the meeting. For the
 15 deposition I should say.
 16 Q. Well, I arrived 75 minutes before the
 17 deposition and my understanding was that you
 18 were in conference at that point?
 19 MR. MEAGHER: Objection. It
 20 assumes facts not in evidence.
 21 A. That's not correct.
 22 Q. (By Mr. Roberts) How long were you in
 23 conference today?
 24 A. Perhaps half an hour.
 25 Q. With whom were you in conference?

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1 A. Mr. Meagher and Mr. Baty.
 2 Q. Did you review documents during the
 3 course of yesterday's preparation with the six
 4 lawyers?
 5 A. I reviewed a document.
 6 Q. Just one document?
 7 A. Just one document.
 8 Q. What was that?
 9 A. It was a piece of correspondence from
 10 Valerie Loftin to Bob Bonzell.
 11 Q. Do you know if that was produced
 12 pursuant to the subpoena or identified in the
 13 privilege log?
 14 A. I believe it was both produced and
 15 identified. I have not seen the privilege log,
 16 so I don't know.
 17 Q. You believe it was produced to me and
 18 then also identified in the privilege log?
 19 A. I believe it was produced in the course
 20 of the documents that I provided to counsel.
 21 And I believe it has been identified as a
 22 privilege document. Again, I've not reviewed
 23 the privilege log, so...
 24 Q. Mr. Bonzell's name doesn't appear in
 25 the privilege log. Why don't we -- I'm going to

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1 give you the privilege log and we will mark it
 2 as one. And then you take some time to review
 3 it and we will go off the video record while
 4 you're doing that. And it will give you a break
 5 as well. Fair enough?
 6 A. Sure.
 7 MR. MARTIN: Time is now 12:53.
 8 And we're going off the record.
 9 (Off the record)
 10 MR. MARTIN: The time is now
 11 1:09. We're back on the record.
 12 Q. (By Mr. Roberts) Mr. Dempsey, while we
 13 were off the record you had an opportunity to
 14 look at the privilege log as produced and then
 15 chronologically created a privilege log trying
 16 to identify this single document that you
 17 reviewed during your multi-hour six-lawyer
 18 preparation session yesterday.
 19 I understand that it's a December of
 20 2002 letter or correspondence between Valerie
 21 Loftin and Bob Bonzell. Have you been able to
 22 locate that document?
 23 MR. MEAGHER: I object to the
 24 form.
 25 A. No, I did not.

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1 Q. (By Mr. Roberts) Am I correct it is a
2 December 2002 memo or letter between those two
3 persons?
4 **A. To my recollection that is correct.**
5 Q. And how many pages is it?
6 **A. I believe it was on two pages.**
7 Q. Who was the author?
8 **A. Valerie Loftin.**
9 Q. She wrote a letter to Bob Bonzell?
10 **A. Correct.**
11 Q. Bob Bonzell, a non-lawyer, president of
12 DMS, correct?
13 **A. Correct.**
14 Q. And what is Valerie Loftin's position?
15 **A. I'm not certain. I believe she's the**
16 **head of claims for Jefferson-Pilot.**
17 Q. Was she giving Bonzell legal advice?
18 **A. I don't know. I don't recall.**
19 Q. Did you read the letter yesterday?
20 **A. I only looked at one paragraph on it I**
21 **think is all I looked at.**
22 Q. Was it your judgment that that
23 paragraph contained legal advice?
24 **A. No.**
25 Q. So that -- that single paragraph of a

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1 single document is the only document you
2 reviewed during your several hour preparation
3 session?
4 **A. That's correct.**
5 Q. Did you have a role in gathering
6 documents for complying with the subpoena, sir?
7 **A. Yes.**
8 Q. What was your role?
9 **A. Identifying and making a CD to provide**
10 **to counsel.**
11 Q. So you mailed a CD to Mr. Baty with the
12 documents that you were able to collect?
13 **A. I believe a runner picked up the CD and**
14 **then I also produced the hard copy documents**
15 **that I had as well.**
16 Q. So the items that are on the CD would
17 be e-mails and other electronically transmitted
18 communications?
19 **A. Correct.**
20 Q. Anyone else at ERAC partake in the
21 production of documents pursuant to the
22 subpoena?
23 **A. Not to my knowledge.**
24 Q. Where did you go to collect the
25 documents?

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1 **A. The electronic documents or the hard**
2 **copy documents?**
3 Q. Both.
4 **A. The hard copy documents were located in**
5 **a lateral file immediately adjacent to my**
6 **office. And the electronic documents are on my**
7 **computer.**
8 Q. A lateral file, you mean a --
9 **A. I mean a storage cabinet that is wider**
10 **than it is deep, if that makes sense to you.**
11 **It's just a storage file cabinet that's wider**
12 **than a traditional one.**
13 Q. That's where you maintained these
14 Kearney paper documents that you received?
15 **A. Yes.**
16 Q. I'm sorry, did I ask you this; was
17 there anyone else that participated in the
18 production of documents at ERAC other than
19 yourself?
20 **A. At ERAC no one else produced any**
21 **documents or did anything of that nature.**
22 Q. That's because you would have been the
23 only one that would have had documents in your
24 possession?
25 **A. At ERAC, yes.**

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1 Q. Why do you keep saying at ERAC? Are
2 you referring to potentially documents that --
3 **A. I understand that a document was**
4 **produced by someone else.**
5 Q. Did you see that document?
6 **A. I have seen that document, yes.**
7 Q. Was that document something that was in
8 your files as well?
9 **A. I believe so.**
10 Q. Do you know if that was produced to me
11 from you directly?
12 **A. I believe so. It was produced by me.**
13 **I believe it was in the materials that I had.**
14 Q. You're referring to the document that
15 Attorney Zahnd provided to me, right?
16 **A. I have an understanding of a document I**
17 **believe Attorney Zahnd produced and that is the**
18 **document I'm referring to, which is just very**
19 **short.**
20 Q. I didn't come across this document in
21 the documents produced pursuant to the subpoena
22 from ERAC that I received last week. But it's
23 your testimony you gave that document to your
24 counsel to produce to me?
25 **A. I believe I did, yes.**

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1 Q. Do you know why it was that this
2 document came to me through Mr. Zahnd?
3 A. No.
4 Q. Did you see the letter from Mr. Zahnd?
5 A. No.
6 Q. Does Mr. Newkirk still work with you?
7 A. No.
8 Q. He went with Swiss Re in that
9 transaction?
10 A. Correct.
11 Q. Are you mindful that it's Mr. Newkirk
12 that produced that document to me, in addition
13 to your belief that you produced it to me?
14 A. **I have an understanding of what I**
15 **believe was produced, but I have not seen**
16 **Mr. Zahnd's letter or the document that he**
17 **produced.**
18 (Dempsey Exhibits 1 & 2 were
19 marked for identification by the reporter.)
20 Q. (By Mr. Roberts) Exhibit 2, sir, is
21 the letter from Mr. Zahnd?
22 MR. MEAGHER: Do you have a copy?
23 If not, I will take a look at the witness'.
24 MR. ROBERTS: I have a copy for
25 you, sir.

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1 MR. MEAGHER: All right. Thank
2 you.
3 Q. (By Mr. Roberts) Have you seen this
4 letter from Mr. Zahnd before?
5 A. No.
6 MR. MEAGHER: If I could take a
7 look at it before the questions, I would
8 appreciate it. Thank you so much.
9 Q. (By Mr. Roberts) Now that Mr. Meagher
10 has a copy --
11 MR. MEAGHER: If I could have a
12 moment to read it. It's multi page. By the
13 way, I don't think video was properly noticed
14 and we object to the use of video at trial. It
15 does require prior notice. Okay. I have
16 reviewed it. Thank you.
17 MR. ROBERTS: Are you sure you're
18 ready? You didn't take much time.
19 MR. MEAGHER: Pretty quick
20 reader.
21 Q. (By Mr. Roberts) Sir, according to
22 this letter from Mr. Zahnd dated May 4th, '07,
23 the document attached was a document that was in
24 Mr. Newkirk's possession at the time the
25 subpoena was served. Do you understand that or

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1 is that your understanding?
2 A. **I understand that is your assertion.**
3 Q. It's not my assertion, it's what the
4 letter asserts.
5 A. **I haven't had time to complete reading**
6 **the letter, but...**
7 Q. Assume that I'm not misrepresenting --
8 A. **Certainly.**
9 Q. -- what the letter says, the attached
10 document was in Newkirk's possession and he's
11 producing it. Do you know why it would be that
12 Newkirk would still have this document?
13 A. **I have no idea.**
14 Q. Was this an electronically stored
15 document?
16 A. **I have no idea.**
17 Q. Well, you say you produced it. Is it
18 something that you stored electronically?
19 A. **No.**
20 Q. Are the numbers on here accurate?
21 A. **I have no idea.**
22 Q. Well, the document indicates, last page
23 of Exhibit 2, "Chris Kearney," it says "he has
24 two policies," gives the number and then it
25 identifies the ERC percentage.

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1 A. **Okay.**
2 Q. And under one policy it says ".2750,
3 lifetime," what does that mean?
4 A. **I'm not sure in what context Mr.**
5 **Newkirk was putting this information down.**
6 Q. Well, being familiar with the ERC
7 business and policies and individual disability,
8 does that mean that the benefits are lifetime?
9 A. **The document indicates -- it states**
10 **twice lifetime.**
11 Q. Once for each policy?
12 A. **Well, it has the word "lifetime" under**
13 **each policy number.**
14 Q. And you don't want to go out on a limb
15 and speculate as to what lifetime might be in
16 this context?
17 MR. MEAGHER: Objection to form.
18 A. **Well, lifetime in the context of a**
19 **disability policy would mean that there is a**
20 **lifetime benefit period.**
21 Q. (By Mr. Roberts) The next says
22 "Benefit," and under the 029 policy it says
23 "67.1 percent," or actually it says .67.1
24 percent." And under the 069 policy it says a
25 "100 percent." Does that mean under one policy

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1 ERC has 67 percent of the responsibility and
2 under the other it's 100 percent?

3 **A. Well, it's under the heading of**
4 **Benefit, so it doesn't necessarily logically**
5 **follow, but you could make that -- you could**
6 **make that guess I suppose.**

7 Q. It says "The Reserves .317,171 under
8 one policy and 184,536 under the other. Does
9 that mean the total reserve on the policies as
10 of whatever date this document was is a little
11 over 500,000?

12 **A. I have no idea.**

13 Q. Is this a form document at ERC, this
14 type of layout of information?

15 **A. Not to my knowledge.**

16 Q. Do you know why he would include the
17 jurisdiction?

18 **A. I have no idea.**

19 Q. That's a legal term that indicates
20 where lawsuits can be brought, right?

21 MR. MEAGHER: Objection to form.

22 **A. Mr. Newkirk is a lawyer, so I can only**
23 **assume he had those type of characteristics in**
24 **mind, not necessarily to litigate, but -- I**
25 **don't know. I would have to speculate as to why**

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1 **Mr. Newkirk put that on there.**

2 Q. (By Mr. Roberts) That's what
3 jurisdiction means, right, where lawsuits can be
4 brought?

5 MR. MEAGHER: Objection to form.

6 **A. I think jurisdiction is somewhat of a**
7 **generic term, but, yes, that would be my**
8 **understanding, that's where a lawsuit could be**
9 **brought. It can mean a variety of things,**
10 **subject matter, personal, etcetera.**

11 Q. (By Mr. Roberts) These list of seven
12 things kind of a To-Do list down at the bottom,
13 do you see that?

14 **A. I do.**

15 Q. Do you know who was directing that to
16 To-Do List?

17 **A. I'm not sure I understand what you mean**
18 **by directing.**

19 Q. Do you know if Mr. Newkirk was creating
20 that to To-Do List and directing that others
21 undertake those items?

22 **A. No, I don't know that.**

23 Q. At the bottom it says "Copied for DMS."
24 Do you know if he actually copied this document
25 and gave it to DMS?

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1 **A. No, I don't know.**

2 Q. You're mindful in the documents that
3 were produced to me last week there's everything
4 from the application filed back in 1990,
5 documents all from 1990 through even last month,
6 right, May of 2007?

7 **A. That's correct.**

8 Q. How is it that ERC came to possess
9 those documents?

10 **A. Which documents?**

11 Q. Well, the documents that predate 2000?

12 **A. ERC has the right under the reinsurance**
13 **agreement to copies of all the documents. And I**
14 **can only speculate as to how they were produced**
15 **or who obtained them, but it would be pursuant**
16 **to that right under the reinsurance agreement.**

17 Q. Do you know when that happened?

18 **A. No. It predated my employment at ERC.**

19 Q. So prior to your employment at ERC
20 there were documents regarding Kearney from the
21 '90 to '96 timeframe at ERC?

22 **A. Let me amend that somewhat. Prior to**
23 **my involvement with the Jefferson-Pilot account**
24 **they were obtained. Exactly when, I don't know,**
25 **but it was prior to my involvement.**

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1 Q. You came to be involved in '98?

2 **A. Correct.**

3 Q. And when you came to be involved there
4 was materials regarding Mr. Kearney and ERC's
5 files that predated '98?

6 **A. Correct.**

7 Q. Do you know how big the file was then?

8 **A. My recollection of the file at the time**
9 **I obtained it would be that it was probably less**
10 **than an inch thick.**

11 Q. What materials were in there?

12 **A. The materials I recall seeing in the**
13 **claim file were some claim forms and -- I really**
14 **don't recall anything specific above and beyond**
15 **just seeing continuance of disability forms in**
16 **the file. Aside from that, I don't remember any**
17 **specific type or form of document.**

18 Q. You don't recall whether the policy was
19 in there?

20 **A. No, I don't.**

21 Q. Now ERC possesses the application file.
22 Do you know when it was that the application
23 file from 1990 was obtained by ERC?

24 **A. No, I don't.**

25 Q. You've been the person at ERC or ERAC

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1 responsible for this claim since '98, correct?

2 **A. Correct.**

3 MR. MEAGHER: Objection to form.

4 Q. (By Mr. Roberts) And you don't know
5 when it would have been that the application
6 file and all the other documents, the 3000 plus
7 documents were received?

8 **A. As for the application file, I did not
9 request it, so it had to have been a portion of
10 the file that I inherited. As for the other
11 3000 pages, as I stated earlier, I believe those
12 are largely pursuant to the litigation.**

13 Q. Well, there is certainly litigation
14 documents in there. There's pleadings, motions,
15 correspondence, deposition transcripts. But the
16 documents that predate the litigation, were
17 those things that came to ERC contemporaneous
18 with their date or were they things that came
19 after the litigation?

20 MR. BATY: Objection. Asked and
21 answered.

22 MR. MEAGHER: I join.

23 **A. To my knowledge anything aside -- I
24 won't say anything. The documents that you're
25 referring to would had to have been compiled by**

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1 correspondence, deposition transcripts, medical
2 records?

3 **A. I'm sorry, was that a question?**

4 Q. Yes.

5 **A. Would you repeat it, please.**

6 Q. Is it the case that you receive
7 contemporaneously pleadings, correspondence,
8 deposition transcripts, medical records in the
9 litigation?

10 **A. I could receive any or all of those
11 documents in any given case. That is correct.**

12 Q. Why are you being copied on those
13 materials?

14 **A. You mean with respect to --**

15 Q. The litigation?

16 **A. I'm being copied on it because of ERC's
17 interest in the litigation and the fact that I'm
18 acting as an attorney for Employers Reassurance
19 Corporation.**

20 Q. Are you making decisions in the
21 litigation?

22 **A. I participate in discussions about
23 matters in the litigation. I have not made
24 decisions per se.**

25 Q. You weigh-in, give them your thoughts

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1 **someone other than myself.**

2 Q. (By Mr. Roberts) The pre-litigation
3 documents?

4 **A. The pre-1998 documents.**

5 Q. Litigation was commenced by
6 Jefferson-Pilot in June of 2002. The documents
7 in the file that relate to the period '98
8 through 2002, are those things that came to you
9 prior to litigation?

10 **A. I would have to look at the documents.
11 I honestly don't know.**

12 Q. Do you recall how it is you came to
13 possess the volume, the thousands of pages?

14 **A. Once again, I believe the thousands of
15 pages are primarily attributable to the motions,
16 pleadings, correspondence, etcetera, that you
17 just laid out for us. The minority of the
18 documents were compiled prior to my involvement,
19 to my recollection and belief. I don't know
20 that I personally gathered documents. I would
21 have to look. If you have a specific document,
22 I would have to look at it.**

23 Q. So during the course of the litigation
24 is the case that you contemporaneously received
25 from somebody pleadings that are filed, e-mails,

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1 and opinions, comment about other peoples'
2 thoughts?

3 **A. Certainly.**

4 Q. And apples being apples, ERC has more
5 at stake in litigation than Jefferson-Pilot
6 does, correct?

7 MR. MEAGHER: Objection to form.

8 **A. ERC apparently has more than 50 percent
9 of the reinsurance liability on this claim.**

10 Q. (By Mr. Roberts) What does the term "
11 work product" mean? Are you familiar with that?

12 **A. I'm familiar with that term.**

13 Q. Can you tell the jury what it means?

14 **A. That would be documents or it could
15 encompass conversations that an attorney
16 produces with respect to their client and with
17 respect to litigation.**

18 Q. In anticipation of litigation?

19 **A. Certainly.**

20 Q. Isn't that the definition?

21 MR. MEAGHER: Objection to form.

22 **A. I will certainly agree with that.**

23 Q. (By Mr. Roberts) There was a lot of
24 documents that you maintained that were withheld
25 under the claim of work product, are you mindful

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1 of that?

2 **A. Just from my brief review of your**
3 **privilege log, I saw work product identified.**

4 Q. You didn't partake in designating
5 documents as work product or attorney/client
6 privilege?

7 **A. No.**

8 Q. You just produced everything you had to
9 your counsel and from there they decided what
10 would be referred to as work product or
11 attorney/client privilege?

12 **A. That is correct.**

13 Q. Your counsel, Mr. Baty, is with you
14 today. Do you know if he participated in that
15 exercise with any other lawyers?

16 MR. MEAGHER: I would object on
17 work product grounds as to what procedures and
18 methods were used to determine privilege claims.

19 MR. BATY: Join in the objection.

20 MR. ROBERTS: Are you instructing
21 him not to answer?

22 MR. BATY: Yes, I'm going to
23 instruct him not to answer. The only reason
24 that he would know that or understand that would
25 be in discussion with me, so I'm going to

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1 instruct you not to answer the question.

2 Q. (By Mr. Roberts) You know, sir, that
3 when a lawyer claims work product it's because a
4 document comments on or is in anticipation of
5 litigation, right?

6 **A. Correct.**

7 MR. ROBERTS: Can we have a
8 stipulation that all of the documents produced
9 to me are authentic?

10 MR. BATY: Yes. You and I had
11 that discussion earlier in connection with the
12 subpoena that you issued to the corporation
13 Employers Reassurance. And I told you at the
14 time that Mr. Dempsey was the witness who could
15 testify to that. And rather than go through the
16 documents that were actually produced to you, we
17 will stipulate as to the authenticity of the
18 documents.

19 MR. ROBERTS: Mr. Meagher, you're
20 shaking your head up and down. Are you --

21 MR. MEAGHER: I have no reason to
22 disagree. If the producing party says they are
23 authentic, I have no reason to object to that.

24 Q. (By Mr. Roberts) Now, as that file
25 produced to me exist, there's, I think we

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1 discussed the application file from 1990 on
2 Mr. Kearney is in there?

3 **A. You indicated that earlier.**

4 Q. You don't know that?

5 **A. I don't recall that.**

6 Q. Do you recall that the policy is in
7 there?

8 **A. No, I don't recall that.**

9 Q. Have you ever made an effort to look at
10 the policy?

11 **A. I have looked at a specimen policy in
12 connection with Mr. Kearney's claim.**

13 Q. When did you do that?

14 **A. I have probably done that several
15 times.**

16 Q. Prior to the litigation?

17 **A. Yes.**

18 Q. Prior to 2002?

19 **A. Yes.**

20 Q. Prior to 2001?

21 **A. Certainly in 2001. I don't know if
22 there was anytime prior to 2001, I don't recall,
23 but I know I did in 2001.**

24 Q. Do you know there's medical records in
25 there, in the ERC file?

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1 **A. I don't recall that.**

2 Q. You don't recall there is medical
3 records in there?

4 **A. No, I don't.**

5 Q. There's information in there about
6 Mr. Kearney's other lawsuits with third parties.
7 Are you mindful of that?

8 **A. I recall information about
9 Mr. Kearney's other lawsuits. I don't recall it
10 was in that file, but I do recall that that
11 information has arisen in the course of the
12 adjudication of his claim.**

13 Q. Are you mindful there is information in
14 there about his relationship with his wife?

15 **A. I recall there being some information
16 about his wife of fairly recent note, but I
17 don't recall anything specific beyond that.**

18 Q. You're mindful that there is
19 surveillance information in there including
20 photographs?

21 **A. I have seen a photograph that I believe
22 was produced by you.**

23 Q. Well, the privilege log makes reference
24 to several photographs that have been withheld
25 from me. Are those things that are maintained

Page 58

1 in your file?

2 **A. I don't recall.**

3 Q. There is IME reports on Mr. Kearney in
4 your ERC or ERAC file, are you mindful of that?

5 **A. I do recall an IME report.**

6 Q. Pleadings including drafts of pleadings
7 that weren't filed, are you mindful of that?

8 **A. I recall pleadings. I don't recall
9 drafts, but I do recall pleading.**

10 Q. It's been the case over the past
11 several years that drafts of pleadings or
12 motions or memoranda would be shared with you
13 before filing, correct?

14 **A. That's correct.**

15 Q. Drafts of correspondence to
16 Mr. Kearney's counsel has been shared with you
17 before they have been issued, correct?

18 **A. On some occasions.**

19 Q. Deposition transcripts have been
20 provided to you for your review, right?

21 **A. I have seen at least two or three
22 deposition transcripts.**

23 Q. Hearing transcripts, right?

24 **A. Hearing transcripts, yes, I believe
25 there have been a couple hearing transcripts.**

Page 59

1 Q. That are in your file?

2 **A. That were electronic documents I
3 maintained as opposed to being in a physical
4 file.**

5 Q. Electronic and physical are in your
6 file?

7 **A. I'm trying to explain, not
8 differentiate.**

9 Q. Mr. Kearney's tax returns are in your
10 file, business and personal?

11 **A. I recall seeing -- or I recall there
12 being tax information in the file.**

13 Q. Information regarding audits of
14 Mr. Kearney's financial condition is in your
15 file?

16 **A. I don't recall that.**

17 Q. Why do you have all that information?
18 You're not adjudicating the claim, are you?

19 **A. No, I'm not.**

20 Q. So why do you have all that
21 information?

22 **A. It helps me to analyze the claim.**

23 Q. And then you express your opinion to
24 the persons who are responsible for litigating
25 it, correct?

Page 60

1 **A. I express my opinions to the people
2 that are involved in adjudicating the claim as
3 well as litigating the claim.**

4 Q. Do you do that in all matters of your
5 insured, your clients insureds, that go to
6 litigation?

7 **A. Not all, but probably the majority of
8 all claims that go to litigation have a high
9 level of involvement by someone with Employers
10 Reassurance Corporation.**

11 Q. Because of the percentage of the
12 liability you carry?

13 **A. No. Simply because it's in litigation
14 and it's something that we would be interested
15 in, but it's not a routine that's engaged in
16 every claim.**

17 Q. Did you review the privilege log before
18 it was issued to me?

19 **A. No.**

20 Q. Could you take a look at it now for me.

21 **A. Certainly.**

22 MR. MEAGHER: Do you have another
23 copy?

24 **A. Is there something in particular you
25 want me to look at or just to flip through?**

Page 61

1 Q. We are going to go through several
2 entries on there.

3 **A. Okay.**

4 MR. MEAGHER: If we're going to
5 go through several entries, why don't we have a
6 copy made of that.

7 MR. BATY: Sure.

8 MR. ROBERTS: Let's go off the
9 video record and off the record.

10 MR. MARTIN: The time is now
11 1:40. We are going off the record.

12 (Off the record)

13 (Dempsey Exhibit 3 through 24 was
14 marked for identification porter.)

15 MR. MARTIN: The time is now
16 1:49. We're back on the record.

17 Q. (By Mr. Roberts) Mr. Dempsey, do you
18 know who Arthur Huy, H-u-y?

19 **A. No, I do not.**

20 Q. J.L. Roberson?

21 **A. I am familiar with the name.**

22 Q. Did you hire Geraldine Johnson?

23 **A. I spoke with Geraldine Johnson about
24 this matter, but I don't believe she was
25 retained by myself or ERC per se. We had some**

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1 discussions with her.

2 Q. Is Geraldine Johnson a lawyer that ERC
3 had used prior to Mr. Kearney?

4 A. No.

5 Q. So your testimony under oath is that
6 you're not the person and ERC wasn't the entity
7 that directed she be retained to file a lawsuit
8 against Mr. Kearney?

9 A. I believe my recollection is that I
10 spoke with Ms. Johnson about Mr. Kearney's
11 claim.

12 Q. Did you participate in the decision to
13 retain her to file a lawsuit against
14 Mr. Kearney? Don't tell me what you told her or
15 what she said. I just want to know if you
16 participated in the decision to retain her?

17 A. I believe I indicated to
18 Jefferson-Pilot that we had spoken with
19 Geraldine Johnson and that she had reviewed the
20 contract, the policy.

21 MR. BATY: His question was did
22 you participate.

23 A. I don't recall. I don't recall whether
24 that occurred or not. I just don't recall the
25 exact mechanics of how that occurred.

Page 63

1 Q. Whose Jane Neidermyer?

2 A. Jane Neidermyer is an employee of now
3 Lincoln Financial formally Jefferson-Pilot.

4 Q. You had interactions with her regarding
5 this claim?

6 A. I don't recall that I did.

7 Q. Do you know what her role was at
8 Jefferson-Pilot?

9 A. She was the -- she was in charge of the
10 claims area at Jefferson-Pilot at that time.

11 Q. Was she a lawyer as far as you know?

12 A. Not to my knowledge.

13 Q. Do you know who Lori Gallien is?
14 G-a-l-l-i-e-n.

15 A. The name is vaguely familiar, but I
16 don't recall in what context.

17 Q. Neidermyer is N-e-i-d-e-r-m-y-e-r. Who
18 is Karen Gaum, G-a-u-m?

19 A. I have no idea.

20 Q. Have you spoken with Bill Hughes about
21 this matter?

22 A. Not that I recall.

23 Q. You cannot recall ever speaking to
24 Mr. Hughes about Chris Kearney?

25 A. No, I don't.

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1 Q. I asked you a negative question and you
2 gave me a negative response.

3 A. I do not recall ever speaking with
4 Mr. Hughes about Chris Kearney's claim.

5 Q. Thank you. Who is Lisa Pluto?

6 A. I have no idea.

7 Q. Who is Pat Beardshaw?

8 A. I don't know.

9 Q. Diane Goodman?

10 A. I don't know.

11 Q. Sandie Cook?

12 A. I don't know.

13 Q. John Cohill?

14 A. I don't know.

15 Q. Cynthia Croft?

16 A. Cynthia Croft is the head of claims at
17 the Lincoln Financial office in Concord, New
18 Hampshire.

19 Q. Michelle Allen?

20 A. I don't know -- I take that back.

21 Michelle Allen I believe is an employee of DMS.

22 Q. Do you know what her role is?

23 A. No.

24 Q. Is she in a support role or does she
25 have some claims responsibility?

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1 A. I don't know. I recognize her name as
2 an employee of DMS.

3 Q. Do you know who Dave Foster is?

4 A. No, I do not.

5 Q. John Zervas?

6 A. I do not know John.

7 Q. A lawyer. Z-e-r-v-a-s.

8 A. I do not know John to my knowledge. I
9 don't recall the name.

10 Q. Shared some correspondence with him
11 according to the privilege log in January of
12 '04? It doesn't ring a bell?

13 A. No, it doesn't.

14 Q. Linda Bey, B-e-y ?

15 A. I believe Ms. Bey is a legal assistant
16 or paralegal at Disability Management Services.

17 Q. How many lawyers have been involved in
18 prosecuting this claim against Mr. Kearney?

19 MR. MEAGHER: Objection to form.

20 A. I believe Geraldine Johnson until the
21 time of her death and Mr. Ellis and Mr. Meagher.

22 Q. The privilege log shows a whole bunch
23 of other lawyers Peter Burrell, Randy McGaff,
24 Amy Gasser Callow, Adam Formus, Stephanie
25 Farabow, yourself, and the list goes on. C.J.

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1 Schmidt?
2 **A. Well, I misinterpreted your sense of**
3 **the word "prosecuting this". And so, yes, there**
4 **have been other lawyers involved such as those**
5 **you just identified.**

6 Q. You personally have interacted with
7 more than ten during the course of this
8 litigation, right?

9 **A. I don't know that for a fact.**

10 MR. ROBERTS: I guess we will
11 stipulate that the privilege log is authentic as
12 well, Exhibit 1, and an accurate representation
13 of the documents referred to?

14 MR. BATY: Right. He didn't see
15 it, but it was produced by counsel.

16 MR. ROBERTS: Can we have that
17 stipulation?

18 MR. BATY: Yes.

19 MR. MEAGHER: The privilege logs
20 aren't evidence, so authenticity is not
21 appropriate, but it is what it is.

22 Q. (By Mr. Roberts) Does ERC have
23 responsibility for the legal expenses in the
24 lawsuit filed by Jefferson-Pilot against
25 Mr. Kearney?

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1 **A. ERC shares a percentage of the legal**
2 **expenses.**

3 Q. Commensurate with its liability on the
4 claim?

5 **A. Correct.**

6 Q. Who is Rick Strange -- or Stange,
7 S-t-a-n-g-e?

8 **A. I believe Mr. Stange is the head of**
9 **litigation for Jefferson-Pilot. I don't know if**
10 **his role has changed since they were acquired by**
11 **Lincoln.**

12 Q. Lincoln Financial?

13 **A. Correct.**

14 Q. Who is Patricia Perez?

15 **A. Ms. Perez is my assistants.**

16 Q. Who is Kristin Knoll, K-n-o-l-l?

17 **A. I don't know.**

18 Q. An e-mail to me in the privilege log.
19 I won't tell anybody. Scott Lancaster?

20 **A. I don't know Scott to my recollection.**

21 Q. Darlene Stanczak, S-t-a-n-c-z-a-k?

22 **A. I don't know.**

23 Q. C.J. Schmidt?

24 **A. I believe Mr. Schmidt is an attorney in**
25 **the law firm that Mr. Ellis and Ms. Callow are**

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1 **members of.**

2 Q. Peter Burrell?

3 **A. I believe Peter Burrell may be in that**
4 **same law firm.**

5 Q. Carl Semmler, S-e-m-m-l-e-r?

6 **A. Mr. Semmler is an attorney employed by**
7 **Lincoln Financial, a staff attorney, in-house**
8 **counsel.**

9 Q. Mark Davenport?

10 **A. Mark Davenport I believe was an actuary**
11 **employed at Jefferson-Pilot at that time.**

12 Q. Bill --

13 **A. I'm sorry, I'm misspeaking. I believe**
14 **Mark Davenport is an attorney in Dallas, Texas.**

15 Q. He apparently was involved in the
16 Kearney claim at Document 1916 in February of
17 '06. Does that ring a bell?

18 **A. No, it doesn't.**

19 Q. How about Bill Davenport?

20 **A. I don't know a Bill Davenport.**

21 Q. Steve Rice?

22 **A. Steve Rice is a CPA employed by DMS.**

23 Q. Andy Cohen?

24 **A. Andy Cohen is counsel for DMS.**

25 Q. Adam Formus?

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1 **A. Adam Formus is counsel for DMS.**

2 Q. Stephanie Farabow?

3 **A. Stephanie Farabow is in-house counsel**
4 **for Jefferson-Pilot now Lincoln Financial.**

5 Q. Carrie Barnes?

6 **A. I believe Ms. Barnes is a DMS employee.**
7 **I believe she's an attorney for DMS.**

8 Q. George Walker?

9 **A. I don't know.**

10 Q. Diane Goodman? Did I mention her
11 before?

12 **A. The name is familiar. I believe**
13 **Ms. Goodman may be a DMS employee, but I can't**
14 **state that with absolute certainty.**

15 Q. Andrew Lynn?

16 **A. I believe Mr. Lynn is an attorney at**
17 **DMS.**

18 Q. Norman Carrier?

19 **A. Mr. Carrier is a claim examiner**
20 **employed by Jefferson-Pilot now Lincoln**
21 **Financial in their Concord, New Hampshire**
22 **office.**

23 Q. What do you understand the status of
24 Mr. Kearney's non-litigation claim to be?

25 **A. I believe he's being paid. Would it be**

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1 possible to take a break in a minute or two?
 2 Q. That would be perfect. Did I ask you
 3 who Andy Cohen is?
 4 A. You did.
 5 Q. Who is Maria Martinez?
 6 A. I don't know.
 7 Q. Scott West?
 8 A. Scott West is in-house counsel for
 9 ERAC.
 10 Q. Is he someone that reports to you?
 11 A. No.
 12 Q. Is he your peer?
 13 A. Essentially.
 14 Q. Did he recently become involved in the
 15 claim?
 16 A. He's only been employed --
 17 Q. Or litigation?
 18 A. -- by ERAC for a couple of years, so
 19 that would be true.
 20 Q. Now would be a good time for a break?
 21 A. Thank you.
 22 MR. MARTIN: The time is now
 23 2:11. We're going off the record.
 24 (Recess)
 25 MR. MARTIN: The time is now

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1 2:15. We're back on the record.
 2 Q. (By Mr. Roberts) Mr. Dempsey, let's
 3 focus a little bit on the privilege log. Your
 4 mindful of how this is laid out. There's
 5 several columns and it's -- the references are
 6 here numerically based on how documents were
 7 numbered, do you understand that?
 8 A. Under the Beginning Document column?
 9 Q. Yes.
 10 A. Yes.
 11 Q. So if I ask you to turn to the
 12 reference to Document No. 789, could you do
 13 that?
 14 A. Yes.
 15 Q. Take a look at 789, 804, 800, 801, all
 16 of those documents are dated February '94 and
 17 have been withheld under the claim of work
 18 product privilege, right?
 19 A. That is what this document indicates,
 20 yes.
 21 Q. Meaning that the company was
 22 anticipating litigation against Mr. Kearney back
 23 in February of 1994 would be your conclusion,
 24 right?
 25 MR. MEAGHER: Objection to form.

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1 A. Yes.
 2 Q. (By Mr. Roberts) If you turn to 401.
 3 A. Okay.
 4 Q. That's a document from February of '95
 5 from some unknown person to some unknown person
 6 that's being withheld for what reason?
 7 A. The privilege claimed is work product.
 8 Q. In February of '95, correct?
 9 A. Correct.
 10 Q. If you turn to 718.
 11 A. Okay.
 12 Q. That's a document from the next month
 13 March of '95 from an unknown author to an
 14 unknown recipient also being withheld for what
 15 reason is claimed?
 16 A. Document 718 -- I'm sorry.
 17 Q. Yes.
 18 A. Yes. It's being withheld on the basis
 19 of work product.
 20 Q. If you turn to 1466 for me?
 21 A. Okay.
 22 Q. That document is dated November 14th of
 23 1996, correct?
 24 A. According to the privilege log, yes,
 25 that's correct.

Page 73

1 Q. By your predecessor with responsibility
 2 for the claim here at ERC?
 3 A. Mr. Newkirk, that's correct.
 4 Q. Who was your predecessor responsible
 5 for the Jefferson-Pilot block of business at
 6 ERC?
 7 A. That is correct.
 8 Q. His responsibility was in the November
 9 '96 timeframe, right?
 10 A. That was his responsibility at that
 11 time.
 12 Q. You were a new-be at ERC at that time?
 13 A. That is correct.
 14 Q. And the subject of that particular
 15 document being withheld is what? What's the
 16 subject of that document?
 17 A. It says it's a recommendation.
 18 Q. And it's being held on the basis of
 19 what?
 20 A. Work product.
 21 Q. And it's a transmittal from ERC to
 22 Mr. Roberson at Jefferson-Pilot, is that your
 23 understanding?
 24 A. It's a transmittal from Mr. Newkirk at
 25 ERC to Mr. Roberson at Jefferson-Pilot.

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1 Q. It's a memorandum?

2 **A. That is correct. It's described as a**

3 **memorandum. I don't have the document. I don't**

4 **know, but it's described as a memorandum.**

5 Q. Dated November of '96 being withheld.

6 This recommendation is being withheld on the

7 basis of work product, right?

8 **A. That is what the privilege log**

9 **indicates.**

10 Q. February '97 there's a document

11 numbered 0536?

12 **A. Okay.**

13 Q. Unknown author, unknown recipient,

14 subject is the Kearney claim and it too is being

15 withheld because it's a document in anticipation

16 of litigation or work product?

17 **A. That's what the privilege log**

18 **indicates.**

19 Q. When you produce documents, did you

20 make any effort to conclude -- strike that. A

21 minute ago I referred to a couple documents that

22 had unknown authors and unknown recipients?

23 **A. Yes, you did.**

24 Q. When you produce those documents, did

25 you make an effort to try to conclude who was

Page 75

1 the author and who was the recipient?

2 **A. No, I did not.**

3 Q. After you produced documents, did you

4 consult with your counsel about the creation of

5 a privilege log?

6 **A. No, I did not.**

7 Q. You just turned the documents over and

8 now you see a privilege log?

9 **A. That is correct.**

10 Q. Did I have you take a look at 508? I'm

11 sorry.

12 **A. I don't believe you did. I'm looking**

13 **at it.**

14 Q. September of '97, document still prior

15 to your involvement being withheld under the

16 privilege called work product, right?

17 **A. That is what the privilege log**

18 **indicates, yes.**

19 Q. Now if you can take a look at 001 to

20 005. This is a five page memorandum reportedly

21 created by you on the subject of, quote.

22 Additional claim file review" that was

23 transmitted to Harold Shelton, right?

24 **A. You're referring to document 001 of the**

25 **five you just mentioned?**

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1 Q. Document beginning date 001 and end doc

2 number 005, five page document.

3 **A. I see, I misunderstood. Yes.**

4 Q. There's a five page document that you

5 purportedly authored in March of '98 that

6 details your additional claim file review that

7 you gave to Jefferson-Pilot, is that right?

8 **A. That is what the privilege log**

9 **indicates, yes.**

10 Q. Are you mindful sitting here what

11 document is referenced there?

12 **A. I believe I am mindful, but I'm not**

13 **certain that it is, in fact, the document that I**

14 **think it could be.**

15 Q. Is it an accurate characterization of

16 the document to call it Additional Claim File

17 Review?

18 **A. If it's the document I'm thinking of,**

19 **it only pertains in part to Mr. Kearney. It was**

20 **not solely related to him. There was some other**

21 **claims involved if it's the document that I**

22 **believe it is.**

23 Q. We don't know for certain?

24 **A. No, I don't know for certain.**

25 Q. But you did do a claim file review on

Page 77

1 Mr. Kearney in or about March of '98?

2 **A. I cannot tell you that I reviewed**

3 **Mr. Kearney's entire claim file, but the**

4 **document -- if this is the document that I**

5 **believe it is, there are -- it's a result of the**

6 **review I did. So, you know, whether it was**

7 **review of documents that I had in my possession**

8 **or I actually reviewed the entirety of the claim**

9 **file at Jefferson-Pilot, I can't tell you.**

10 Q. The next document I want you to focus

11 on is 316?

12 **A. 360?**

13 Q. 316.

14 **A. All right.**

15 Q. This is a May of 1998 document being

16 withheld under two separate privileges,

17 attorney/client and work product, right?

18 **A. That's what the privilege log**

19 **indicates.**

20 Q. And the subject matter is claim

21 handling, right?

22 **A. That is correct.**

23 Q. And the author is Bill Ellis, who is

24 the lawyer now in the litigation against

25 Mr. Kearney, right?

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1 **A. That's what the privilege log**
2 **indicates.**
3 Q. And the recipient is David Newkirk?
4 **A. Again that's what the log indicates.**
5 Q. So more than four years prior to
6 actually filing a lawsuit against Mr. Kearney,
7 Mr. Ellis was involved in discussing claims
8 handling with ERC on Mr. Kearney's claim?
9 **A. I don't know.**
10 Q. That's what one would conclude from
11 this reference, right?
12 MR. MEAGHER: Object to form.
13 **A. You can conclude that.**
14 Q. (By Mr. Roberts) Is that a logical
15 conclusion?
16 MR. MEAGHER: Same objection.
17 **A. You can conclude that from the fact**
18 **that it's on the privilege log.**
19 Q. (By Mr. Roberts) Do you conclude that?
20 **A. Without examining the document I can't**
21 **tell you, but I would conclude that by virtue of**
22 **the fact it's on the privilege log.**
23 Q. How many files did you personally refer
24 to DMS under the consulting agreement?
25 **A. Under the consulting agreement I don't**

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1 **know. I honestly don't know.**
2 Q. Are we talking hundreds?
3 **A. No.**
4 Q. Talking dozens?
5 **A. No.**
6 Q. I'm talking about just not
7 Jefferson-Pilot, all of the clients?
8 **A. Under the consulting agreement period,**
9 **I really don't know. There certainly have not**
10 **been hundreds.**
11 Q. What drives you to use their services?
12 **A. DMS provides good customer service and**
13 **they --**
14 Q. To whom?
15 **A. To everyone involved.**
16 Q. The policyholder?
17 **A. The policyholder.**
18 Q. What makes you conclude that?
19 **A. Just based on my understanding of how**
20 **they conduct their business operations.**
21 Q. They provide you good customer service?
22 **A. ERC is satisfied with the service they**
23 **provide.**
24 Q. DMS has been a vendor for more than a
25 decade?

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1 **A. That is correct.**
2 Q. So what directs -- what compels Bill
3 Dempsey to send a file to DMS?
4 **A. When a company is overwhelmed by the**
5 **claims volume or when a company needs additional**
6 **resources to investigate a claim.**
7 Q. Then you turn to DMS?
8 **A. Not in every case. Sometimes I**
9 **interact with the company.**
10 Q. What directs you to engage DMS?
11 **A. I would engage DMS. At this point we**
12 **have DMS involved in blocks that they manage. I**
13 **don't engage them on any other basis at this**
14 **point. I discuss certain cases that pertain to**
15 **blocks that they manage.**
16 Q. So you haven't made a referral to DMS
17 under the consulting agreement for sometime?
18 **A. No. Not for quite sometime, no, I have**
19 **not done that.**
20 Q. The consulting agreement is still in
21 place?
22 **A. I don't believe it is.**
23 Q. When it was in place, was it a rare
24 occurrence for you to direct a claim file to
25 DMS, or was it a common occurrence? I'm

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1 referring to DMS under the consulting agreement.
2 **A. It would be rare.**
3 Q. Sir, I think we're coming near the end
4 here. I have marked several documents as
5 Exhibits 3 through 24.
6 **A. Would you like me to return the**
7 **privilege log to the reporter?**
8 Q. That would be great. I have marked as
9 Exhibit 3, it has a Bates number at the bottom
10 WDDP 000317?
11 **A. Correct.**
12 Q. Second page is -- the full number is
13 not there. It's 33. And then the copier cut it
14 off. The third page is 342, do you see that?
15 **A. Yes, I do.**
16 Q. You're mindful that Bates number refers
17 to documents produced to me that were maintained
18 in your storage cabinet?
19 **A. Yes.**
20 Q. And you understand these to be the
21 applications, some of the applications, filed
22 documents dating back to 1990 on Mr. Kearney?
23 **A. I see there is a notation on**
24 **Document 317 that says "App file". And based on**
25 **the title of Document 338, I would assume that**

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1 this was a report that was gathered in
2 conjunction with the application for insurance.
3 And I suspect Document 342 was in conjunction
4 with Document 338.

5 Q. These are documents from your file,
6 right?

7 A. By virtue of the fact that they were
8 produced, yes.

9 Q. Exhibit 2, letter dated September 8,
10 1993.

11 A. Just one second, Mr. Roberts. I don't
12 know that I have Exhibit 2. I go from three to
13 four.

14 Q. Four. Letter dated September 8, '93.

15 A. Yes. Document 813.

16 Q. Exactly.

17 A. Yes, I have that.

18 Q. I think the handwriting on this
19 document is Roberson, but whether it is or it
20 isn't, does the handwriting on this document
21 make sense to you?

22 A. No, not in this context it doesn't.

23 Q. It seems to say, it appears "May should
24 be at the rate of 63 percent, June at 50
25 percent, July 100 percent." Those numbers don't

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1 A. Correct.

2 Q. And it says "We've received and
3 processed the report submitted to the period
4 January through March of '95 regarding Chris
5 Kearney." And policy number. "Your report
6 indicates 100 percent of benefit amount ceded to
7 ERC. Just need for you to confirm this is the
8 correct percentage. Also, please submit a
9 current medical and/or investigative report for
10 this claimant."

11 Are the facts represented in this
12 letter accurate as far as you know?

13 MR. MEAGHER: Objection to form.

14 A. I don't know.

15 Q. (By Mr. Roberts) You don't know if
16 there's been 100 of the benefit amount ceded --

17 A. No.

18 Q. -- c-e-d-e-d to ERC?

19 A. I apologize for interrupting. No, I do
20 not know that.

21 Q. Do you know that not to be the case?

22 A. No, I don't know it not to be the case
23 either. It appears that it was an issue here
24 too.

25 Q. This too has not been produced

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1 mean anything to you?

2 A. They have no significance to me.

3 Q. Then Exhibit 5, is that 792, Document
4 792?

5 A. Correct.

6 Q. This came from your file. Do you hold
7 any significance to these notes on this
8 particular exhibit?

9 A. It appears to be a document where
10 someone was inquiring with regard to residual
11 disability, onset of residual disability. I
12 can't read all the rest of it.

13 Q. This is not a document that has been
14 produced previously in the litigation. I was
15 wondering is this a document that ERC created or
16 is this a document you received from
17 Jefferson-Pilot?

18 A. ERC, to the best of my knowledge, did
19 not create this document.

20 Q. Do you see it's dated November of '94?

21 A. I do.

22 Q. Exhibit 6, document labeled 398 appears
23 to be a April 1, '95 letter from Employers
24 Reinsurance Corporation to Jefferson-Pilot,
25 right?

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1 previously in this litigation even though it was
2 purportedly sent to Jefferson-Pilot. Do you
3 know why that would be?

4 MR. MEAGHER: Object to form.

5 A. I do not know.

6 Q. (By Mr. Roberts) Next Exhibit 7. This
7 appears to be Mr. Shelton's response to ERC,
8 right?

9 A. Correct.

10 Q. And he expounds on it and references a
11 second policy, do you see that?

12 A. Yes.

13 Q. And Mr. Shelton provides
14 contemporaneously the recent disability claim
15 report for ERC, right?

16 A. He indicates that's enclosed with this
17 information, yes.

18 Q. Do you happen to know that was the
19 course of business that ERC would
20 contemporaneously receive those type of forms on
21 Mr. Kearney?

22 A. No, I do not.

23 Q. You don't know one way or the other?

24 A. No.

25 Q. Is that the case in '98 through 2002?

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1 **A. I don't believe it was the case.**
2 Q. Did you ever receive any continuance of
3 disability information involving Mr. Kearney
4 during that period?
5 **A. It's possible. I can't tell you one**
6 **way or the other.**
7 Q. Document 010, 011, 012 is Exhibit 8.
8 Do you know whose handwriting this is?
9 **A. I believe this is John Anderson's**
10 **handwriting.**
11 Q. So at the top where it says "Res equals
12 501,707," is that the ERC reserve or is that the
13 JP reserve?
14 **A. I do not know.**
15 Q. Look back at Exhibit 2.
16 **A. I don't believe I have an Exhibit 2.**
17 Q. Okay. The document that Mr. Newkirk
18 provided, do you know who authored that
19 document, ERC or somebody else?
20 **A. I believe Mr. Newkirk authored that**
21 **document.**
22 Q. When he states the reserve there, is he
23 referring to the ERC reserve exclusive of any JP
24 reserve?
25 **A. I don't know.**

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1 MR. MEAGHER: Objection. Asked
2 and answered.
3 Q. (By Mr. Roberts) What's the total
4 reserve he reflects on Exhibit 2?
5 MR. MEAGHER: Objection. Form.
6 **A. Approximately 501,000 and some change.**
7 Q. (By Mr. Roberts) Thank you. Do you
8 recall in the whole history of this claim of
9 Mr. Kearney that there was an October 2001 Cuban
10 coffee house meeting?
11 MR. MEAGHER: Objection to form.
12 **A. I am not certain what you're alluding**
13 **to there. I can speculate, but I'm not going to**
14 **do that.**
15 Q. (By Mr. Roberts) You were instructed
16 yesterday over the course of five hours not to
17 speculate, so don't do that.
18 MR. MEAGHER: I'm going to
19 object. It's attorney/client privilege as to
20 any discussions.
21 Q. (By Mr. Roberts) In October of 2001,
22 there was a meeting in Miami, Florida. You're
23 mindful that that event was reported to you
24 subsequent, right?
25 **A. Yes.**

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1 Q. And at that meeting, I wasn't there, I
2 also have been told that there was a settlement
3 proposal or some kind of offer made to
4 Mr. Kearney's lawyer. Is that your
5 understanding also?
6 **A. That's correct.**
7 Q. And the offer was contingent on
8 Mr. Kearney turning in his policies, right?
9 **A. I don't recall.**
10 Q. Were you consulted prior to the
11 individuals who made that offer to Mr. Kearney's
12 lawyer?
13 **A. I believe I was.**
14 Q. And did you participate somehow in the
15 authority that they were given to make the offer
16 in the stated amount, whatever that amount was?
17 **A. Can you restate that?**
18 Q. Can you authorize those individuals to
19 state a certain offer?
20 **A. I don't --**
21 MR. BATY: I'm going to object to
22 attorney/client privilege in terms of what he
23 did. I think your first question was did he
24 participate and that I was going to allow him to
25 answer.

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1 Q. (By Mr. Roberts) Why don't we return
2 to my first question if that's the one that
3 you're allowed to answer. Did you participate
4 in authorizing those individuals to make the
5 stated offer? Are you looking for guidance?
6 **A. I'm waiting to see if there's is an**
7 **objection because I don't think that was your**
8 **prior question.**
9 Q. Can we read back the prior question?
10 (Whereupon, the previous question
11 from page 88, line 15 was read back by the
12 reporter.)
13 Q. (By Mr. Roberts) What do you
14 understand the question to have been?
15 MR. BATY: The first question she
16 read, did you participate.
17 (Whereupon, the previous question
18 from page 88, line 15 was read back by the
19 reporter.)
20 MR. BATY: Answer that question.
21 **A. I believe so.**
22 Q. (By Mr. Roberts) Who else
23 participated?
24 **A. I don't recall.**
25 Q. Was Jefferson-Pilot represented during

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1 that process?

2 **A. I don't recall.**

3 Q. Do you recall who you communicated
4 with?

5 **A. I think I know who I did, but I don't
6 know with absolute certainty.**

7 Q. Do you think it was Bill Hughes?

8 **A. No.**

9 Q. Bob Mills?

10 **A. I believe it was Bob Mills.**

11 Q. You don't recall any other
12 participants?

13 **A. No.**

14 Q. You don't recall any other
15 participants, correct?

16 **A. No, I do not recall any other
17 participants.**

18 Q. Is this Exhibit 8 a form that you, ERC
19 gets from DMS on claims that are referred to
20 DMS?

21 **A. I believe ERC got certain claim
22 analysis reported on this form, yes.**

23 Q. Not just on Mr. Kearney's claim, but
24 other claims?

25 **A. I believe so.**

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1 Q. Is this an ERC created form or is this
2 a DMS created form?

3 **A. This is, to my knowledge, this is a DMS
4 created form.**

5 Q. This document indicates that
6 Mr. Kearney was born in 1952 and the review was
7 done in '97, so he would have been 45, 44,
8 assume for me my math is correct?

9 **A. I will make that assumption, yes.**

10 Q. The reserve 501,000, would it grow or
11 decrease as Mr. Kearney gets older?

12 **A. Ultimately it will decrease.**

13 Q. But he was 44 at that time. Would it
14 increase when he's 45, 46, 47, 48?

15 **A. I don't know.**

16 Q. Does it adjust or does it remain static
17 at the time the claim is filed or once it's
18 established?

19 **A. A reserve changes over time.**

20 Q. On a group basis or an individual claim
21 basis?

22 **A. On an individual claim basis.**

23 Q. So is there an actual exercise to
24 adjust reserves to individual claims at ERC?

25 **A. Repeat that, please.**

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1 Q. So is there an actual exercise to
2 adjust reserves to individual claims at ERC?

3 **A. As I stated earlier, the reserves are
4 what they are. What an actuary does with them I
5 can't tell you.**

6 Q. How about 9. Nine is a July 8th, 1997
7 letter from Mr. Shelton to DMS that comes from
8 your file and is numbered 050.

9 MR. MEAGHER: Counsel, before you
10 proceed, I note inadvertently there is other
11 insureds names identified in the Re and those
12 should be redacted before it's attached to the
13 deposition.

14 MR. ROBERTS: I don't know that I
15 agree with that, but let's proceed.

16 MR. MEAGHER: Then I would
17 designate this as confidential under the order.

18 MR. ROBERTS: The entire
19 transcript?

20 MR. MEAGHER: Not yet.

21 Q. (By Mr. Roberts) This says " Dear
22 John, Enclosed is the material from the files in
23 the above three insureds, Mr. Kahn, Mr. Kearney
24 and Mr. London. These are the cases that you're
25 going to investigate for us to see what can be

Page 93

1 done either to settle these in an equitable
2 manner to both the reinsurer and to
3 Jefferson-Pilot, or to give us further advice on
4 where to proceed," right?

5 **A. That is correct.**

6 Q. Are these three files files that
7 Newkirk directed JP to send to DMS under the
8 consulting agreement?

9 **A. I don't know.**

10 Q. Do you think it would be important for
11 the task to be to see what could be done to
12 settle these in an equitable manner on behalf of
13 the insured instead of just the reinsurer and
14 Jefferson-Pilot?

15 MR. BATY: Objection.
16 Argumentative.

17 MR. MEAGHER: Objection to form.

18 **A. Can I answer? Yes, I would think that
19 is important.**

20 Q. (By Mr. Roberts) Do you know why
21 that's not stated here?

22 MR. BATY: Objection. Same
23 objection.

24 MR. MEAGHER: Join.

25 **A. No, I do not.**

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1 Q. (By Mr. Roberts) Next is ten and this
2 appears to be DMS's status report on those three
3 referrals with some information redacted and
4 some information about Mr. Kearney, right?

5 A. Yes.

6 Q. Do you know if this information was in
7 the ERC claim file when you took responsibility
8 for the Jefferson-Pilot block of business?

9 MR. MEAGHER: Objection to form.

10 A. No, I don't know.

11 Q. (By Mr. Roberts) Next is a June 1998
12 letter, which is Exhibit 11, right?

13 A. That is correct.

14 Q. This is from Shelton to Newkirk in June
15 of '98. Had you at that point taken
16 responsibility for the claim or not?

17 A. I don't know.

18 Q. Well, if you look at 001 of the
19 privilege log, this is after you write a five
20 page letter to Shelton regarding additional
21 claim file review, 001 to 005, right?

22 A. Correct.

23 Q. And what this letter reflects is just
24 the sharing of certain expenses relating to
25 Mr. Kearney's policy, sharing of information

Page 95

1 about expenses?

2 A. That's what it appears to be, yes.

3 Q. Does the calculation at the bottom make
4 sense to you?

5 A. Yes.

6 Q. Does this mean that there was issued
7 \$3500 of benefits and 2800 of the 3500 was
8 something ceded to ERC?

9 A. That is what the document indicates.

10 Q. And then someone did the math on that
11 and calculated that to be 80 percent of the
12 obligation was ceded to ERC?

13 A. That's what it would appear to be, yes.

14 Q. And you multiply that by the amount of
15 the expense and you come to ERC's portion,
16 right?

17 A. I think that's correct.

18 Q. Is that number accurate? Does ERC have
19 80 percent of the responsibility?

20 A. I don't know.

21 Q. Is it something that is presently in
22 dispute between you and Jefferson-Pilot?

23 A. No.

24 Q. Has there ever been a dispute about the
25 percentage as far as you know?

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1 A. As far as I know, no.

2 Q. Exhibit 12 is a similar letter dated a
3 week later, June 26th, '98. Do you know whose
4 handwriting that is "Okay to pay our percentage
5 to JP?"

6 A. I believe it's Mr. Newkirk's writing.

7 Q. Was it the procedure that you or he had
8 to authorize payments on the Kearney claim?

9 A. For issues that are sent to us for
10 reimbursement, yes, we would have to authorize
11 the payment.

12 Q. By reimbursement you're excluding
13 actual claim dollars paid? You're just talking
14 about the surveillance, medical records, legal
15 expenses, that kind of thing?

16 A. For expenses certainly. For those
17 types of expenses we would authorize the
18 reimbursement, yes.

19 Q. What about payment of the claim?

20 A. Payment of the claim, you know, it's --
21 we are billed periodically from Jefferson-Pilot
22 for their payments.

23 Q. How do you satisfy yourself that the
24 payments are appropriate?

25 A. That Jefferson-Pilot's payments are

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1 appropriate? I believe we take a ceding
2 company's word for it rather than do a claim by
3 claim review.

4 Q. Well, you do do audit reviews and you
5 get involved in litigation and you hand pick
6 some for review, right?

7 A. True.

8 Q. 13 is a July 9, '98 letter from Shelton
9 to Newkirk regarding Kearney and, again, the
10 sharing of expenses?

11 A. Correct.

12 Q. 14 is some ERC internal documents
13 regarding expenses paid on Kearney's claim?

14 A. That's correct.

15 Q. 15 is the cover page of a Motion For
16 Summary Judgment in a case between J.E. Grote
17 and Innomation. That appears in your Kearney
18 claim file?

19 A. I see that.

20 Q. From a case filed in 1997. Do you know
21 why that's in your claim file?

22 A. I'm not certain.

23 Q. Sixteen is a document that's Bates 191.
24 This is appears to be page two of some document.
25 Page one wasn't produced, but it indicates there

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1 were some surveillance of Mr. Kearney in January
2 of 2001 and you were provided the report of the
3 surveillance, is that accurate?

4 MR. MEAGHER: Objection to form.

5 **A. It appears to be a portion of an**
6 **investigative report.**

7 Q. (By Mr. Roberts) Was that the case?
8 Did you along the way get copies of all the
9 surveillance that was being conducted and
10 performed on the Kearney claim?

11 **A. I don't know that I got copies of**
12 **anything -- or excuse me, of everything.**

13 Q. You were getting billed for it?

14 **A. Uh-huh.**

15 Q. And had to authorize it for it to be
16 paid?

17 **A. Correct.**

18 Q. Is it your testimony to the jury that
19 you were getting billed for it, but you were not
20 actually getting the surveillance reports?

21 MR. MEAGHER: Objection to form.

22 MR. BATY: Join.

23 **A. That's not unusual.**

24 Q. (By Mr. Roberts) Were you directing
25 that surveillance be performed?

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1 **A. I don't believe so.**

2 Q. Did you at any point in time?

3 **A. I don't recall.**

4 Q. Next is Exhibit 17, which is the first
5 page of some forensic accounting report of
6 Joseph Levy to Bob Mills from your file?

7 **A. Uh-huh.**

8 Q. You're mindful that -- it's called
9 Supplemental Report. You're mindful there were
10 some financial reviews of Mr. Kearney's records
11 performed and included in your file?

12 **A. I recall that there was a financial**
13 **review done at some point, but that's the extent**
14 **of my recollection.**

15 Q. You're mindful of just one being done?

16 **A. I only recall one.**

17 Q. Next is Exhibit 18. And this is the
18 letter that Mr. Kearney received with the
19 lawsuit. I included it because I wanted you to
20 tell me who Jane Neidermyer is who is shown in
21 the blind copy?

22 **A. As I indicated to you earlier, Jane**
23 **Neidermyer is the person that was in charge of**
24 **their claim operation, of Jefferson-Pilot's**
25 **claim operation in Concord, New Hampshire.**

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1 Q. 19 is a document labeled 0025
2 reportedly from October of 2003. The first page
3 of -- series of medical records on Mr. Kearney.
4 You're still getting contemporaneous medical
5 records on Mr. Kearney here at ERC or ERAC?

6 **A. I last received some medical records**
7 **several months ago.**

8 Q. What's the purpose for you receiving
9 medical records?

10 **A. For me to assist in the analysis of the**
11 **claim.**

12 Q. Next is Exhibit 20 labeled -- it's
13 Bates No. 1913. This is purported an entry
14 regarding payment. This is actually never
15 actually signed by the Judge or presented to the
16 Judge as far as I'm aware, but it appears in
17 your claim file. Do I conclude correctly that
18 drafts of motions and pleadings to be filed with
19 the Court were shared with you before filing?

20 **A. On some occasions, yes.**

21 Q. Next is 21, which is a spreadsheet.
22 This is titled Unpaid COLA Benefits. Do you
23 know why this appears in your file?

24 **A. I believe it's because it's in**
25 **association with Mr. Kearney's claim.**

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1 Q. Next is 22 which is medical records on
2 Mr. Kearney of a Dr. Shepard from November of
3 2006, just eight months ago. I think we talked
4 about this earlier. You get medical records on
5 Mr. Kearney even ones from recent time in order
6 to assist in the evaluation, is that right?

7 **A. That is correct.**

8 Q. Is his medical condition under analysis
9 presently?

10 MR. MEAGHER: Well, with regard
11 to any discussions between the counsel group
12 during pendency of the litigation, I would
13 object on the grounds of work product and
14 attorney/client privilege.

15 MR. ROBERTS: Are you instructing
16 him not to answer?

17 MR. BATY: I join in the
18 objection, but it's to the extent that he can
19 answer the question without getting into
20 discussions that you've had with counsel.

21 MR. MEAGHER: Could you read the
22 question back, please?

23 (Whereupon, the previous question
24 was read back by the reporter.)
25

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1 **A. I believe Mr. Kearney's medical**
2 **condition is at issue.**
3 Q. (By Mr. Roberts) His present medical
4 condition?
5 **A. His present medical condition.**
6 Q. Outside the litigation whether or not
7 he qualifies for benefits today, whether he had
8 a lawsuit pending or not, is that your
9 testimony?
10 **A. Yes.**
11 Q. And you've been assisting in that
12 endeavor, correct?
13 **A. I would like for you to define**
14 **assisting.**
15 Q. You're getting present medical records
16 for that purpose, correct?
17 **A. Yes. I received medical records**
18 **several months or at least several weeks ago. I**
19 **can't remember the last time I was updated on**
20 **it, but it's probably been in the four to eight**
21 **week range.**
22 Q. What triggered the present analysis of
23 his medical condition for his continued
24 entitlement to benefits?
25 **A. Well, I believe an ongoing disability**

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1 **claim is subject to that type of analysis at any**
2 **point in time.**
3 Q. You're mindful Mr. Kearney just had a
4 heart attack?
5 **A. No, I'm not.**
6 MR. MEAGHER: Is he going to be
7 available for deposition next week?
8 MR. ROBERTS: You got a one
9 track mind.
10 MR. MEAGHER: We want to know if
11 he's incapacitated, certainly we will change the
12 date.
13 MR. ROBERTS: You would
14 accommodate him?
15 MR. MEAGHER: Well, I haven't
16 been informed by you that that's a problem.
17 MR. ROBERTS: Your colleague
18 knows.
19 MR. MEAGHER: We have travel
20 plans. Okay. So it's not going on Wednesday?
21 MR. ROBERTS: Let me proceed with
22 the deposition, please.
23 MR. MEAGHER: You don't want to
24 respond to me?
25 MR. ROBERTS: I will respond to

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1 you when the deposition is concluded, counsel.
2 MR. MEAGHER: All right. Fine.
3 Thank you.
4 Q. (By Mr. Roberts) So it's just a
5 routine exercise to review his medical records
6 because he has an ongoing claim. That's what's
7 going on right now?
8 **A. Yes.**
9 Q. Are his credit card records being
10 evaluated for that purpose?
11 **A. I don't know.**
12 MR. MEAGHER: Objection to the
13 form.
14 Q. (By Mr. Roberts) Have you sought his
15 records for that purpose?
16 **A. Which records?**
17 Q. Credit card records?
18 **A. I have not sought those records.**
19 Q. Do you know if they are being sought
20 for that purpose?
21 **A. I believe so.**
22 Q. Is the next one 24 which is a May 31,
23 2007 letter to Mr. Kearney from DMS, which comes
24 from your claim file?
25 **A. I'm sorry, are you asking me if this**

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1 **comes from my claim file?**
2 Q. The next document is Exhibit 24, which
3 is a May 31, 2007 letter, correct?
4 **A. That is correct.**
5 Q. And this came from your claim file?
6 **A. I believe so.**
7 Q. This document that is just two weeks
8 old?
9 **A. I believe so.**
10 Q. And this doesn't relate to litigation.
11 This relates to his ongoing claim?
12 **A. Right.**
13 Q. And you're getting these documents
14 contemporaneous with their issuance?
15 **A. Correct.**
16 Q. I need one moment.
17 (Off the record)
18 Q. (By Mr. Roberts) Privilege log,
19 Exhibit 1, can you turn to 2948 and 2949?
20 **A. I have a non-chronological privilege**
21 **log. I'm sorry. I can look for it, but it**
22 **might take me --**
23 MR. BATY: What's the number
24 again?
25 Q. (By Mr. Roberts) On that document

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1 January 27, 2006, and it's Bates No. 2948.
 2 **A. I got it.**
 3 Q. So you should be at document 02948 to
 4 02949, dated January 27, 2006 from Bill Ellis to
 5 Formus, Dempsey, Farabow, copy Callow. And the
 6 subject matter is the Jay trial.
 7 **A. I see that.**
 8 Q. Is this a misprint or does this relate
 9 to Kearney?
 10 **A. I don't know.**
 11 Q. 2941 dated February 9th of '06.
 12 MR. MEAGHER: What number?
 13 Q. 2941 dated February 9th '06?
 14 **A. I got it.**
 15 Q. The subject matter concerns a voice
 16 mail from Dorsey and Whitney, which is a law
 17 firm. Are they a law firm that's been retained
 18 on the Kearney claim?
 19 **A. I don't recall.**
 20 Q. Can you turn to May 24, 2004,
 21 Document 3261.
 22 **A. What was the document number again,**
 23 **please?**
 24 Q. 3261.
 25 **A. I have that.**

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1 Q. And the subject is Kearney, Jeffries
 2 and King. Do you know who Jeffries is?
 3 **A. It rings a bell, but I can't tell you**
 4 **affirmatively that I know who it is.**
 5 Q. Is that another claim you're handling?
 6 **A. No, I don't believe so.**
 7 Q. Ever handled?
 8 **A. I don't believe so.**
 9 Q. Do you know what it's relation to
 10 Kearney is?
 11 **A. No, I don't.**
 12 Q. Do you know who King is?
 13 **A. I believe I do.**
 14 Q. That's a gentleman that filed a lawsuit
 15 against Jefferson-Pilot down south somewhere?
 16 **A. I believe in Mississippi.**
 17 Q. What is his association to Kearney?
 18 **A. I can't tell you without looking at the**
 19 **document.**
 20 Q. Did he too have a residual disability
 21 claim and litigation commenced and there was a
 22 dispute about what the policy provided?
 23 **A. I don't recall.**
 24 Q. Turn to 3339 dated February 28th, '07.
 25 **A. Can you give me the document number**

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1 **again.**
 2 Q. 3339, February '07.
 3 **A. Okay, I have that.**
 4 Q. This is an e-mail from Ellis to
 5 Meagher, Formus, Dempsey, Farabow and Callow
 6 regarding Kearney's divorce status. How does
 7 that relate to his claim?
 8 MR. MEAGHER: I'm going to
 9 object. This is work product and
 10 attorney/client privilege.
 11 Q. (By Mr. Roberts) So you're
 12 investigating his divorce status?
 13 MR. BATY: I join in the
 14 objection to the extent this is work product and
 15 I instruct the witness not to answer that.
 16 **A. On the advice of counsel I will not**
 17 **respond to that.**
 18 Q. (By Mr. Roberts) 3344 to 3347.
 19 **A. What's the date on that, sir?**
 20 Q. February 23rd, '07, from Meagher to you
 21 copying Formus and Farabow, an e-mail that says
 22 "Re: Kearney records RVW-IME question mark,
 23 question mark." Do you know what the acronym
 24 RVW stands for?
 25 MR. MEAGHER: Again, it's work

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1 product, attorney/client.
 2 MR. ROBERTS: The acronym RVW?
 3 MR. BATY: Join in the objection.
 4 And instruct the witness not to answer.
 5 **A. On advice of counsel I won't respond.**
 6 Q. (By Mr. Roberts) You're indicating to
 7 me what the word says, but you're not going to
 8 tell me what it actually means?
 9 MR. BATY: Same instruction.
 10 MR. ROBERTS: I'm asking counsel.
 11 I mean this is a document that you or your law
 12 firm created and you shortened something to get
 13 into the space it looks like. You're not going
 14 to tell me what RVW stands for?
 15 MR. BATY: No.
 16 Q. (By Mr. Roberts) Who is ERAC's direct
 17 parent?
 18 **A. They have had a business**
 19 **reorganization, so I can't state with certainty.**
 20 Q. Is there any entity that has liability
 21 other than JP and ERC should there be liability
 22 on Mr. Kearney's claim?
 23 **A. Not to my knowledge.**
 24 Q. You don't have any other reinsurance
 25 agreement or treaty with any other entity?

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1 A. There are retro-session agreements in
2 place, but I don't know whether they are
3 applicable to this particular reinsurance
4 agreement or not.

5 MR. ROBERTS: Thank you. I have
6 no further questions.

7 A. Thank you.

8 MR. MEAGHER: No questions.

9 MR. MARTIN: Time is 3:12. We
10 are going off the record.
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1 CERTIFICATE

2 I, Mary Lynn Cushing, a Certified
3 Shorthand Reporter for the State of Missouri, do
4 hereby certify:

5 That prior to being examined the
6 witness was by me duly sworn;

7 That said deposition was taken down by
8 me in shorthand at the time and place
9 hereinbefore stated and was thereafter reduced
10 to writing under my direction;

11 That I am not a relative or employee or
12 attorney or counsel of any of the parties, or a
13 relative or employee of such attorney or
14 counsel, or financially interested in the
15 action.

16 WITNESS my hand and seal this _____
17 day of _____, 2007.
18
19

20 MARY LYNN CUSHING, CSR, CCR No. 1077
21 FEES DUE METROPOLITAN COURT REPORTERS, INC. :
22 \$_____ ATTORNEY FOR PLAINTIFF
23 \$_____ ATTORNEY FOR DEFENDANT
24
25

Page 111

1 _____
2
3
4
5
6
7 WILLIAM DEMPSEY
8
9
10

11 Subscribed and Sworn to before
12 me this _____ day of _____, 2007.
13
14
15

16 _____
17 Notary Public
18
19

20 County of _____
21 State of _____
22
23

24 JEFFERSON-PILOT vs. CHRISTOPHER KEARNEY
25

1 June 28, 2007
2
3

4 Mr. William Dempsey
5 c/o Mr. Bruce E. Baty
6 Stinson, Morrison, Hecker, LLP
7 1201 Walnut Street, Suite 2900
8 Kansas City, Missouri, 64106
9 RE: JEFFERSON-PILOT VS. CHRISTOPHER KEARNEY

10 Dear Mr. Dempsey:

11 Enclosed is your deposition, given in the
12 above-named matter, for your examination and
13 signing. You will also find a signature page
14 and an errata sheet for your convenience in
15 making any changes or corrections.
16 Pursuant to the law, any change in "form or
17 substance" of an answer shall be accompanied
18 with a statement of the reason given by you for
19 making such change.

20 Upon completion of your examination and reading,
21 please sign the enclosed signature page and
22 errata sheet and return them to this office in
23 the enclosed self-addressed envelope. If we
24 have not received the signed documents from you
25 within 30 days from the date of this letter, an
unsigned copy of your deposition will be filed.

Yours very truly,

METROPOLITAN COURT REPORTERS, INC.

By: MARY LYNN CUSHING, CSR, CCR No. 1077

<p>1 ERRATA SHEET</p> <p>2 RE: JEFFERSON-PILOT VS. CHRISTOPHER KEARNEY</p> <p>3 DEPOSITION OF: WILLIAM DEMPSEY</p> <p>4 PG/LN NO. CORRECTION REASON FOR CHANGE</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____ I certify that I have read my deposition</p> <p>19 in the above case and I request that no changes</p> <p>20 be made.</p> <p>21 _____ I certify that I have read my deposition</p> <p>22 in the above case and I request that the above</p> <p>23 changes be made.</p> <p>24 SIGNATURE OF DEPONENT: _____</p> <p>25 DATED: _____</p>	

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